



(27,852)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 495.

PATRICK H. BODKIN, APPELLANT,

vs.

WILLIAM B. EDWARDS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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PATRICK H. BODKIN, Appellant,

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WILLIAM B. EDWARDS, Appellee.

On Appeal from the United States District Court for the Southern
District of California, Southern Division.

Names and Addresses of Attorneys.

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"Amended Bill of Complaint.

To the Honorable the Judges of the United States District Court:

And now, June 24th, 1918, complainant above named, by leave of the Court first had, files this as his amended complaint and says:

That he is a citizen of the State of California, residing at Redlands, within the Southern Judicial District and Division of California, and brings this complaint against Patrick H. Bodkin, a citizen of the State of California, residing at Neighbors, within the Southern Judicial District and Division of California.

Jurisdiction of this Court exists by reason that this is a suit in equity arising under the Constitution and the laws of the United States, and the matter in controversy herein exceeds in value the sum of \$3,000 exclusive of interest and cost.

For cause of suit complainant alleges:

1. On December 1st, 1902 he made entry under the homestead and Reclamation laws of the United States of the North East Qr. of Section 11, Township 7 South, Range 22 East, S. B. M., he being at the time qualified in every way to make and perfect such entry, and the

land entered being then unappropriated public land of the United States and subject to such entry.

Thereafter plaintiff made substantial and good faith compliance with all the requirements of the homestead and reclamation laws, made final proof of such compliance before the United States

2 Land Office for that land district, April 23, 1909, proved such compliance by two credible witnesses, made oath to all the items required by law to make oath, and paid all the fees required by law to be paid precedent to receiving patent after publishing in due form notice to all persons having or claiming a better right to such land to there and then appear and exhibit such claim of right.

II. No person appeared at that time and place and offered evidence of a better, or of any right adverse to plaintiff, nor was notice ever given plaintiff by the land office that the proof submitted was defective in any way as the special conditions under which entry was made required, if proof was defective, but the land department—ignoring and mistaking the law (and proceeding through a partisan bias and prejudice) refused at all times to consider such proof, or to issue patent to plaintiff consequent thereto, the excuse for such refusal being that this defendant—then admittedly without right—might, under certain conditions, become possessed with a right to appropriate the same land at some unknown future time.

III. At all times after making proof as aforesaid, plaintiff was and is now possessed with the equitable title to the land described, entitled to the issue of patent by the land department of the government as evidence of such title, and to bring suit in a court of equity to maintain his right of title and right of possession to such land.

3 IV. After making proof as aforesaid, plaintiff continued to reside upon the land as theretofore, to cultivate and improve it according to his intention when making entry thereof, and kept his claim of patent continually before the land department, but continuing the assumption of defendant's possession of a futurely accruing right as a perpetual franchise, and regardless of the appeals, petitions and protests of plaintiff at all times, before it, the land department, in recognition of the presumed future right of defendant, and in acceptance of a series of scrip applications made by him March 6, 1914, issued at him a series of patents to the land described, as follows: July 28, 1915, to the West One Half of said $\frac{1}{4}$ Section Patent No. 484487; and to the South East Quarter of said $\frac{1}{4}$ Section, Patent No. 485834; and on August 6, 1915, Patent No. 485833 to the North East Quarter of said $\frac{1}{4}$ Section.

V. In order to show how the mistake of law and how the bias and prejudice herein alleged arose and functioned in this case, plaintiff will further allege and explain, referring, in order to more clearly described the situation, to the map which is annexed to plaintiff's amended bill of complaint, filed May 10, 1917, and made a part of this bill of complaint. The land to which this complaint relates (marked * on map) together with such other lands as are

shown on map, make up a valley tributary to the Colorado River, (shown on eastern boundary) in a region where cultivation and such good faith residence as is required by the homestead laws of the United States, is entirely dependent upon the reclamation of the land by irrigation. In order to enable homestead entrymen to make such residence and cultivation on such land, and for no other reason, Congress passed "The Reclamation Act" June 17, 1902.

VI. In making field examination for the purpose of locating possible reclamation projects, reclamation officers of the government found the valley shown on map, comprising about 60,000 acres of government land shown in western part of map, and about 40,000 acres of land in a single private estate, lying between the government land and the river and intercepting the flow of water from the river, the estate land designated on the map as the "Blythe Rancho." They found a ditch which before his decease, the estate owner had constructed as shown in the northern part of the map (the fall of the land being in the direction of the arrow) being the same ditch now used to reclaim by gravity flow both the "rancho" lands and the government lands adjoining, and only then needing re-opening and extension to enable the reclamation of all the valley lands including the lands afterwards withdrawn, with less pro rata expense than any project the government has ever undertaken, and in full view of these facts and under no misapprehension as to any, a "second form" reclamation withdrawal was recommended and accordingly made, July 17, 1902.

VII. Such form of withdrawal permitted homestead entries only, and by the terms of the reclamation law under which withdrawal was made, the Secretary of the Interior as the agent of the government, offered and contracted with entrymen accepting the special conditions of such entry, to construct a system for the reclamation of the land provided only that its reclamation was feasible, and to proceed diligently to determine such feasibility. Because of the special conditions offered and contracted by the Secretary, the plaintiff accepted the conditions and made entry as aforesaid, at great sacrifice of other opportunity, and but for the special conditions thus offered and accepted, such entry would not have been made.

VIII. Plaintiff was then able and willing to perform his part in the proposed reclamation of the land, and gave evidence of his willingness and of his good faith intentions to comply with all the provisions of the homestead and reclamation laws by establishing residence upon the land entered within thirty days thereafter, taking work stock and tools thereon, improving, clearing and preparing the land for cultivation for the purpose of co-operating with the government as contracted, but plaintiff was not then able or prepared, or had reason to believe he would be required to reside upon continuously and cultivate the land until such time as some form of reclamation of the land were possible, if denied both government aid and opportunity of community or any other aid.

IX. About this time said private estate lands passed to the ownership of a corporation called "The Land and Water Co.," and thereafter the government's duty of diligence and cost reclamation of the entryman's lands was yielded to the company's desire to exploit the settlers' needs for profit, no reclamation of the land being attempted under authority of the government at any time, although the second form reclamation withdrawal was changed to a first form withdrawal and so continued for seven years, and in addition all the unappropriated waters of the Colorado River, which was the only source whereby the lands entered might be reclaimed and rendered habitable, was appropriated under authority of the Secretary of the Interior.

X. A first form reclamation withdrawal is of that class that precluded the further initiation of new rights of any kind or character, it is authorized to be made by the reclamation act only where such progress has been made with the reclamation project that the Secretary is assured water for the irrigation of the land may be had within a reasonable time, after becoming ready to contract for the construction of a reclamation system, and after becoming ready to

give notice of the lands irrigable under the project. With
 7 only a part of the public lands entered prior to this withdrawal, in default of government aid, and with the entered land deprived of opportunity to appropriate water, such withdrawal made the entrymen entirely dependent upon the pleasure of the corporate owners of the intervening land as will plainly appear by the map. As such corporate owners did not then choose either to use the ditch or to permit its use by others, plaintiff, and other entrymen, had no option but to gain sustenance from other lands till such time as it became possible to reclaim and thus cultivate the lands entered, absence of plaintiff, however, being at no time greater than six months, except as granted leave by the land department, and immediately the Land & Water Co. re-opened the old ditch shown on map, though ditch was not near plaintiff's claim, and the company was then loth because of lack of plan, to furnish water to settlers, plaintiff purchased the company's reluctant consent to connect with its ditch, plaintiff making much intervening ditch over government land in order to do so, and thereafter reclaimed, cultivated and improved the land according to intentions never abandoned since making entry.

XI. As a condition of its lawful and logical status under first form withdrawal, all contest rights and privileges pertaining to the homestead law were cut off by the operation of the withdrawal without regulative action of the land department, but mistaking the
 8 law and ignoring the law and the obligations contracted and equity considerations existing with entrymen, the land department attempted, on June 6, 1905, to separately provide by regulation for the consideration of contest rights and privileges, but with greater right and privilege than the law did or could provide, to-wit, the right of consideration as a quiescent, non-existent right until such unknown future time as the land might, by its changed status,

become subject to the initiation of right, limiting such future claim of right, however to the jurisdictional status of the land at such future time.

XII. Thereafter it becoming known to defendant through his friendly relations with certain land department officials that the aforesaid conditions had forced entrymen to exhibit technical flaws in the matter of residence and cultivation of the lands entered, and proceeding on the advice and assurance of such certain officials, defendant sought to take speculative advantage of the plight in which the prior entrymen had been placed, by contesting, under the provisions of the regulations aforesaid, a number of entries, including the entry of plaintiff, for the purpose of selling the preferred rights supposed to be appropriable under the regulations aforesaid. Accordingly contest notice was served on plaintiff May 5, 1908, affidavit of contest stating that plaintiff had never established a residence, or made any improvements, and that he had abandoned the land for more than six months.

9 XIII. At the hearing of said contest it was found, conceded and established without dispute that plaintiff had established residence, had made improvements, that any lack of cultivation or absence happening was due to the conditions as "herein shown was not to the changed intentions of plaintiff, that instead of having abandoned the land, he was residing on, reclaiming, cultivating and improving it when served with contest notice, only defendant himself alleging abandonment, and he also made oath that he did not know, and had no means of knowing the facts.

XIV. On such evidence, not then through prejudice of plaintiff, but to make good the assurances given to defendant and in aid of his speculative program, department officials decided that abandonment was proved, made no allowance for the conditions under subsequent withdrawal as affecting the prior right of plaintiff, but only as affecting the prospective right of defendant, ignored the residence, reclamation and cultivation of the land by plaintiff in process when contest notice was served which was admitted by defendant, and recommended that plaintiff's entry be cancelled, and defendant be given preferred right of entry.

XV. Plaintiff appealed, but smarting under the injustice of such decision, and finding field agents of the department making defendant's camp their headquarters, making wrong reports concerning plaintiff, and showing partisan zeal in many ways, plaintiff 10 said, wrote and printed things about the decision, and about the department in general which field agents and other department officials collected and used to create and propagate a virulent prejudice extending to all parts of the department having to do with appeals made or to be made by plaintiff, then or thereafter.

XVI. After hearing and before final appeal, the department realized a part of the inconsistency and illegality of the regulations aforesaid, and made other regulations January 19, 1909, providing

that thereafter no contest should be allowed on first form withdrawn lands, and that in all cases where contest had been allowed, if preference right had not been used thereunder, such regulation would ipso facto terminate all right futurely promised by the prior regulations, which new regulations plaintiff urged before the department in the appeals made and afterwards pending before it.

XVII. While appeals were pending the Land & Water Co. perfected the plan by which it wished to condition the use of water by the settlers on the government land, by which plan, if uncontested, the company could have appropriated as a clear profit, so much of the current value of the land as they saw fit, and plaintiff was notified to come under this plan or have his land forever barred from the use of water.

11 XVIII. Plaintiff resisted this plan by court proceedings, as a result of which mandamus was issued, and the company was obliged to abandon the plan of collecting an unlimited bonus from the settlers for the privilege of constructing a reclamation system by cash assessment, but as a further result the officers of the company added the great weight of their influence to intensify and extend the prejudice already working within the department against plaintiff, to effect the defeat of plaintiff in the pending appeals before the land department, and to oust plaintiff's possession of the land by any possible manner.

XIX. Thereafter the first form withdrawal was vacated to the extent of permitting the establishment of settlement rights April 18, 1910, and completely vacated and thus made subject to the establishment of entry rights May 18, 1910, whereupon the land department, regardless of any preference rights claims, accepted entries of new claimants to land in the same vicinity, contested, but not by defendant, under the same circumstances as the entry of plaintiff, such entries being accepted on the stated ground that the regulations of January 19, 1909 aforesaid, had terminated further consideration of future rights on all land included in the first form withdrawal.

XX. With record evidence before it of plaintiff's priorly completed right, and of his continued residence, reclamation and cultivation of the land, with appeals and petitions pending for the 12 consideration of such right, with all these lands of a status of which the regulations of June 6, 1905 specifically disclaimed a future projection of right and contrary to its action in the identical cases cited supra, the land department on June 1, 1912, accepted homestead entry of defendant on the stated grounds of a preference right derived from the regulations of June 6, 1905, solely because of the bias and prejudice aforesaid.

XXI. With entry so procured, defendant applied to the Superior Court of Riverside County for a writ of ejectment against plaintiff, which the court, under the circumstances shown, refused to grant.

XXII. Thereafter the growing desire of defendant to deprive plaintiff of his land, and the growing prejudice of Land & Water Co., and of land department officials became consolidated into a conspiracy to cause pending decisions or future actions of the land department to be adverse to the rights of plaintiff, regardless of the merits of the case, and, after so deciding, and plaintiff still attempting to maintain his legal rights, department of justice officials were induced to join, and, the purpose of the conspiracy becoming to injure, oppress, threaten and intimidate plaintiff in the free exercise and enjoyment of the right and privilege secured to him by the Constitution and the laws of the United States, to continue his residence upon,

and the cultivation of, until patent issued or until disposed 13 of by the judgment of a competent court, the land entered

and appropriated by him as a homestead, department of justice officials consented to loan the criminal processes of the government to shield and protect defendant from civil suits then or thereafter brought against him by plaintiff, and to hamper, harass, impede and prevent plaintiff from protecting his right to the possession of the land, or his right to the title thereto, in any court proceedings thereafter and including the present proceeding.

XXIII. In pursuance of said conspiracy and to effect and accomplish the object thereof, by advice and counsel of land department officials, and with criminal proceedings already planned in anticipation of resistance by plaintiff, defendant, on November 25, 1912, forcibly entered upon and attempted to take possession, without leave of the court, of the land herein described, then improved, reclaimed, occupied and cultivated by plaintiff, and then in his peaceful and lawful possession; whereupon, on proper complaint, warrant, trial and judgment, defendant was removed by the peace officers of the State acting in their official capacity, plaintiff taking no personal action therein.

XXIV. Thereupon, defendant wiring the U. S. District Attorney, a deputy United States Marshal was dispatched who arrested plaintiff, and after a period of imprisonment, took him before an assistant 14 U. S. District Attorney, who demanded as the condition of release, that defendant be permitted to take possession of the land then in possession of plaintiff as aforesaid, that any pending court proceedings be dismissed, and future court complaint not made.

XXV. Said assistant attorney reported to the land department at Washington, where appeals of plaintiff in the land decisions was then pending, that plaintiff had been arrested for driving defendant off the land by force and violence, and had been released on his promise to vacate the land forcibly held by him, and to dismiss all actions then pending in the local courts. Subsequently a land department official, representing to act in his official capacity and alleging positive knowledge that the decisions then pending in the land department would deny the right of plaintiff, demanded with heat, that plaintiff vacate and permit defendant to assume possession of the land.

XXVI. Thereafter, the U. S. District Attorney so intimidated the local court by letter that the justice thereof made private and verbal statement to defendant rescinding the trial judgment aforesaid, whereupon defendant again forcibly assumed possession of the land, plaintiff again proceeded against him before another court, and was again arrested and was prosecuted as a criminal for so doing, the assistant attorney leading stating to the court that the proceedings

15 were had according to the ideas of the land office, a land office official assisting throughout, and, at the solicitation of the land department, the assistant Attorney General from Washington, D. C. attended and assisted in the prosecution, appearing as the special representative of the land department. By the methods used in such prosecution, the relation of which is not necessary to this complaint, by manufactured evidence, and by the character of the reports constantly circulated through the "Los Angeles Times" concerning plaintiff, plaintiff was convicted as a criminal and made to serve time thereby, and, through the expense of defense and the interference with industrial opportunity for a long period of time while family expenses continued, plaintiff became bankrupt, unable to properly protect himself in the litigation brought against him by defendant, and unable now to properly conduct this suit against defendant.

XXVII. While the aforesaid criminal proceedings were pending, the land department rendered decision in the appeals of plaintiff then pending, denying the right of plaintiff and upholding the claim of defendant, whereupon, exhibiting such decision, defendant again applied to the Superior Court of Riverside for ejection of plaintiff, and plaintiff being then harassed, intimidated and bankrupted by the aforesaid criminal proceedings, and unable to interpose proper, or any, defense, ejection followed, as a result of which, and for no other reason, plaintiff has ever since and does now reside elsewhere.

16 XXVIII. With the withdrawal vacated, the lawful right of contest restored, the land reclaimed by the efforts of plaintiff, with defendant in possession but making no attempt to cultivate it, plaintiff made application to the land department to contest the entry of defendant, alleging failure to establish residence, failure to cultivate, and that defendant's alleged preferred right was obtained and entry made for the purpose of speculation, and not for a home, serving notice on defendant at the time of such application and the grounds.

XXIX. Said contest application was rejected on the ground that the charges were mere conclusions which plaintiff must not be allowed to determine. Plaintiff appealed.

XXX. One of the reasons urged by plaintiff in the course of his several appeals before the land department, why defendant should not be permitted to claim the land to which plaintiff had completed claim was, that defendant at the same time claimed other land by homestead, which, as a reason for freeing the land of plaintiff from the claim of defendant, the department would not consider; later,

heeding the claim of another wishing to make entry on such other land, the department cancelled the claim of defendant to such other land on account of such dual claim, and accepted the claim of such other claimant, under which entry such other claimant made large outlay and greatly improved the land.

17 XXXI. Thereafter, and in view of the contest notice served upon defendant as aforesaid, defendant solicited the department to cancel the entry of such other claimant, restore defendant's status to such other land, and accept new locations of Soldiers Additional Scrip in place of the entry plaintiff had applied to contest, all of which was done, and without hearing of any other claimant, scrip application being made March 6, 1914, and homestead entry relinquished March 9, 1914.

XXXII. Such scrip locations require publication and thirty days within which protestants may intervene, plaintiff made protest within thirty days, in due form, under oath, alleging his prior and completed right to the land and pending applications for consideration. On inquiry plaintiff was informed by the Registrar of the land office, that he would not approve of defendant's scrip applications in view of the known rights of plaintiff and his protest thereon. To prevent the Registrar from sustaining the protest of plaintiff, some other incumbent of the land office transmitted the scrip applications of defendant to the General Land Office at Washington, before the Registrar had opportunity to take action thereon, and destroyed the protest of plaintiff; thereafter the General Land Office approved said scrip applications on the report of the Chief of the Field Division

that no protest had ever been made against said applications.

18 Every effort of plaintiff to get a hearing on his protest was denied. Motion for reinstatement of his entry was denied. Petition for exercise of supervisory authority as to all of plaintiff's prior claims was denied. Application to contest, pending on appeal, was denied on motion of defendant's attorney, made after defendant relinquished entry, for the stated reason that plaintiff had not served defendant with copy of appeal. Plaintiff applied for re-hearing on the ground that an application did not require service on party until application was allowed. Department admitted no service was required in mere application, but decided application should be denied on the ground of insufficiency.

XXXIII. In all the litigation before the land department and between plaintiff and defendant extending over a period of several years, no service was ever made upon plaintiff of any paper used or process taken by him or his attorney, save and except the aforesaid application, in which defendant had not yet become a party entitled to notice, but in which he had become a stranger to the past record of the land by reason of filing his relinquishment, thereof, and therefore in which he was not entitled to be heard. In all other cases the department has permitted him and his attorneys to file briefs, statements, and private and confidential letters to the individual examiners in charge of these cases, and has considered and allowed his

19 claims, without service or evidence of service of any one of them upon plaintiff.

XXXIV. Plaintiff alleges that the acts of the land department as herein shown, are contrary to the spirit and intent of the Constitution, and against the laws of the United States, are violative of all principles of equity, justice and fair dealing, against public policy, and shows to have been here applied through bias and prejudice culminating in a conspiracy; that while the right of plaintiff was before the department for adjudication, the department has shown so seized with its own animosity, and so burdened with the animosity of others, as to be incapable of rendering a just judgment. Plaintiff alleges that the department has proceeded squarely against law in refusing to consider the right of plaintiff to complete his claim under first form withdrawal to land entered and settled upon before such withdrawal, regardless of the alleged claims of any person claiming to have secured rights pending the withdrawal, and plaintiff having completed right under the withdrawal, the department is entirely without authority to refuse to consider it.

The department has proceeded squarely against law in attempting to legislate by regulation as to matters not concerning reclamation, but working only to provide defendant with privileges and benefits not obtainable by plaintiff, and subjecting plaintiff to penalties and exactions not required of defendant.

20 The department has proceeded against law and public policy in assuming authority to impair and abrogate existing contracted obligations with plaintiff, in order to assume future obligations to defendant.

Plaintiff alleges that in all of the acts of the land department herein shown, it has proceeded directly against the rule established by a long line of decisions, and against its practice at the time in other identical cases.

Plaintiff alleges that in soliciting and securing the use of the criminal processes of the government to deprive plaintiff of his constitutional right to remain on the land entered until patent issued, or until dispossessed by the judgment of a competent court, and in taking active part in such criminal proceedings while the rights of plaintiff were before the department for consideration, the department has given evidence of the most extreme prejudice and partisan intent, which intent is further evidenced by its decisions as herein shown. Plaintiff alleges that if these mistakes of law, and this bias and prejudice here shown, and the voluntary and involuntary fraud to which plaintiff has been subjected, had not been the controlling factors in the case, patent would have issued to plaintiff, and not to defendant.

Wherefore plaintiff prays that he be declared the real owner of all the real property described herein, that defendant be declared a trustee holding the series of patents issued to him by the land department of the government, for the use and benefit of plaintiff, and that defendant be decreed to transfer proper evidence of title to plaintiff, and to account to plaintiff for the rents, issues

and profits realized while holding the premises as such trustee, and that plaintiff have such other relief as may appear to the Court to be proper.

WILLIAM B. EDWARDS,
Plaintiff.

"Answer of the Defendant."

Comes now the defendant in the above entitled cause and answering plaintiff's complaint and the amendments thereto, and by way of defense, states:

I.

The defendant admits that plaintiff is a citizen of the United States residing at Redlands, California, and that the defendant is also a citizen of the United States, and each residing within the Southern District of California, and within the jurisdiction of this Honorable Court; and that the land described in plaintiff's complaint is situated in Riverside County, California, and that the defendant now holds the legal title thereto by virtue of a patent or patents granted to him by the Land Department of the United States government, and that the land in controversy exceeds in value the sum of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs; but this defendant expressly denies that the patent or 22 patents so held by the defendant to said land, was or were granted to him by the Government of the United States through error arising from the Land Department's wrong construction of the provisions of the constitution or the laws of the United States, or of the Department's authority or jurisdiction thereunder; and this defendant admits that Congress has provided laws for securing title to the unappropriated lands of the United States known as the "homestead law," under which the entryman is entitled to receive patent to the land after residing on, or cultivating the land, in the manner as required by the Acts of Congress and the rules of the Department of the Interior; but denies that the land in controversy was, or is, such land.

II.

Admits that free homesteads were given by the Government to citizens of the United States provided there was a compliance with the laws of Congress and the Land Department of the United States relative to taking up said homestead; but denies that the plaintiff was entitled to take up the land described in his complaint, or file thereon, or is now entitled to such a right.

III.

Answering paragraphs III and IV of plaintiff's complaint, defendant states: That he admits that one of the provisions of the law

was and is that the intentional abandonment of the land entered, or the lack of good faith of the entryman, might and should 23 secure the cancellation of said entry for the purpose of allowing the land to be entered by the person so securing the cancellation; but states that the person so securing the cancellation was entitled to a preference right by reason of his said contest, and was thereby accorded a greater privilege by reason of his successful contest, and that the Government in executing the Land Laws has recognized these fundamental principles consistently at all times; but denies that the duties of the Land Department was purely ministerial, or that their rules and regulations are not subject to change to the injury of any party or parties.

IV.

This defendant denies that a withdrawal of the land from entry for any purpose took it beyond the operation of the land laws, or precluded the initiation of any right within such land to the area withdrawn; or that no initiation of right to enter land could take place in advance of the eligibility either of the land to entry, or the right to make entry; or that where default might have happened the entryman had a right to cure the default at any time before notice of contest; or that the relinquishment of an entry ended all priority possessed by such entryman, or any subsequent attempt by him to gain title to the same land by a new entry subordinate to the prior claim of every other claimant on record; or that where relinquishment is filed pending contest it was or will be presumed 24 as a matter of law or fact that such relinquishment was produced by the contest.

V.

Answering paragraphs VI, VII, VIII, IX and X of plaintiff's complaint, defendant states: That he admits that Congress, on or about June 17, 1902, passed what is known as the "Reclamation Act," and that the Act gave to the Secretary of the Interior of the United States authority to make two forms of withdrawals of land; but further states that by said Act the Secretary of the Interior was given full authority to make all needful, useful and proper regulations to carry the purposes of the act into full force and effect; and admits that the second form of withdrawal permits homestead entries on the land withdrawn; and this defendant states that he at all times complied with all of said laws, rules and regulations; and this defendant admits that the obligation was imposed upon the Secretary of the Interior and on the entryman to proceed diligently with surveys to determine the feasibility of reclaiming the land should reclamation be found feasible or proper, and if found impracticable or unadvisable in the opinion of the officers of the Land Department, to restore the land to settlement and entry under the existing laws of the United States and the regulations of the Secretary of the Interior.

VI.

Admits that the Secretary of the Interior on or about July 17, 1902, withdrew, under such second form, an area of land embracing the North East Quarter of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22) East, 25 S. B. M., and the defendant admits that on or about December 1, 1902, the said land was unappropriated public land of the United States; but denies that the same was subject to settlement or entry under the homestead laws, or that plaintiff was qualified in every way, or in any way to make or perfect an entry on said lands, or that he made homestead entry on said land on said date solely because, or because of his belief that the reclamation conditions under which entry was made constituted a contract, or with the good faith or belief that the execution of said contract, or any duties imposed thereunder was cast upon the Secretary of the Interior to in any way carry out any contract with the plaintiff permitting him to enter or appropriate said lands.

VII.

Denies that plaintiff was then able or willing to perform his part in the proposed reclamation of the land, or gave evidence of his good faith and intentions to comply with all the provisions of the homestead or reclamation laws by establishing residence upon the land within thirty days after making entry thereof, by taking work stock or tools thereon or improving or clearing or preparing the land for cultivation for the purpose of co-operating with the government in the reclamation of the land under the terms of the reclamation 26 law, or the conditions upon which entry was made, or that plaintiff was not then able or prepared, or had reason to believe he would be required to reside upon continuously, or cultivate the land, or that he was denied both government aid, or opportunity of community aid to such reclamation.

VIII.

Denies that after making said second form withdrawal the Secretary of the Interior negligently failed to observe any of the obligations assumed by making such withdrawal, or that no reclamation by government authority was begun, or diligently exercised to determine the feasibility of such reclamation, or that with no reclamation purpose under way the Secretary of the Interior again assumed authority under the Reclamation Act, or without authority made a first form withdrawal of an area embracing said land on September 12, 1903. Admits that a first form withdrawal of the land was made on September 12, 1903, by the Department of the Interior; but denies that such withdrawal took the land withdrawn beyond the operation of the Land Laws in so far as regarded the initiation of any new rights thereto, or deprived the Secretary of the Interior

of authority to provide for and preferred or contingent disposal of land within the area withdrawn.

Denies that at the time of the making of the first form withdrawal of the land the Secretary of the Interior had negligently failed to bring the land within any of these conditions mentioned by plaintiff, or that no reclamation determination had been made, or that no contracts had been let or offered or no public notice of the lands irrigable under the project was given then or ever.

The defendant having no information or belief upon the subject sufficient to enable him to answer and placing his denial thereon, he denies that the failure of the Secretary of the Interior to proceed with any purpose for which withdrawal was authorized was not due to any physical impediment or engineering obstacle to the reclamation of the lands withdrawn, or that the practical feasibility of reclaiming by irrigation the entire area of land so withdrawn, including the land herein described, was at all times plainly evident. Denies that the negligence or failure of the Secretary of the Interior either to proceed with the reclamation of the land withdrawn, or to proceed in the matter of withdrawal according to the terms of the reclamation law deprived plaintiff herein of both Government aid, or of opportunity at that time of community aid, or greatly impaired his opportunity to fulfill the obligations which his faith in the agencies of the Government had induced him to undertake.

Denies that after great effort plaintiff became able to overcome said impairment, or any impairment, or that he thereupon proceeded to improve, or reclaim, the land according to his original intention, or that he reclaimed, or successfully cultivated a greater area without Government aid, or that he was in any way handicapped or injured unlawfully by said withdrawal, or any withdrawal of said land.

Admits that on or about June 6, 1905, the Secretary of the Interior, or the Department of the Interior, made certain regulations in regard to land embraced under a withdrawal under either form, and states that under said regulation an entry of said lands might be contested and cancelled because of entryman's failure to comply with the law, or for any other sufficient reason; and this defendant denies that contrary to the legal status of the land under the withdrawal, he was permitted to initiate contest against the entry of the plaintiff, but admits that defendant's affidavit of contest charged that the de-

fendant had never established a residence on the land, or made improvements thereon as required by law, and that he had been absent from said land for more than six months last passed; and that a hearing of said contest was had under the rules and regulations of the Land Department of the United States; but denies that the 29 hearing of said contest was had as though the land entry had not subsequently been made subject to a complete or isolated withdrawal, or as though no change had been made in the contract conditions under which the entry was made, or no effect of the changed conditions produced by the withdrawal was considered as effecting this plaintiff as entryman making a strict and literal compliance with every requirement of the homestead law; or that said contest was so had as only affecting the prospective technical right of the defendant as contestant, or as relieving the defendant from any requirements or performance under the conditions; or that at the contest trial it was found, or conceded, or established without dispute that the entryman, the plaintiff herein, had established a residence, or had made improvements, or that the improvements made before notice of contest was better than the average, or that any lack of cultivation or absence happening was due to the subsequent suspension of opportunity occasioned by the first form withdrawal of the land; or that at the time the plaintiff as such entryman was served with contest notice he was actually residing upon the land as required by law, or that he was then or for some time prior thereto had been, busily engaged in improving or reclaiming, or cultivating it according to his original intention; denies that notwithstanding the evidence or things as set up by the plaintiff, or the condition 30 of withdrawal then obtaining, the register or receiver either mistaking the law or ignoring the precedents established or hitherto observed by the Department, recommended that the entry of the plaintiff might be cancelled in order that this defendant might secure such preferred right as was presumed to be provided by the regulations of June 6, 1905.

XIII.

Admits that plaintiff herein appealed said decision of the Register or Receiver to the General Land Office at Washington; but denies that while the appeal was pending or undecided, the Secretary of the Interior recognized or admitted in terms that the regulations under which this defendant had been permitted to initiate this or other contest to withdrawn land was unnecessary to any purpose of reclamation, or illegal, or "never should have been made," but states that if any regulation was made on January 19, 1909, or at any other date subsequent to the regulation of 1905 hereinbefore referred to, that the same did not apply to this defendant, nor the land to which, or upon which, he had been permitted to make entry under his preferred right, and that if any such regulation was made, which took away or attempted to take away any rights of this defendant theretofore acquired by his preference right and entry, that the same would not be binding upon this defendant; but the defendant states that no

31 regulation was made in any way on January 19, 1909, or at any other time in any way changing or destroying the rights of this defendant theretofore acquired.

XIV.

Denies that the plaintiff, having by great effort overcome the hampering conditions subsequently imposed on him as specified in his complaint, proceeded to complete, or completed in generous measure every requirement of the homestead law, or made final proof of the fulfillment of such requirements according to the provisions of the homestead law, before the Register or Receiver at Los Angeles; or that he properly proved such compliance by two creditable witnesses, or showed a reclamation or cultivation in excess both of the general homestead and reclamation laws requirements as required by law; and denies that his said proof was not rejected for deficiency or insufficiency, or was not considered in any way, or that the department refused the plaintiff a fair and impartial hearing according to law and the rules and regulations of the Land Department, or that they have failed to give plaintiff a reason for not awarding to him the said land.

XV.

Denies that the Department officials, acting on the plaintiff's said case, or his appeal, mentioned by plaintiff, made any errors of law, or disregarded precedent, or wrongfully sustained the decision of the Register and Receiver at Los Angeles; or that under officials exercising the authority of the Secretary of the Interior wrongfully 32 acted on his said appeal, or made any errors of law, or disregarded precedent in any way; but admits that plaintiff's entry on said land was cancelled on or about April 19, 1909; and states that at said time, under the Preference Right Act of Congress of 1880, and the rules and regulations made in pursuance thereof, this defendant had acquired said land and the right to a patent thereto which was a valuable right, and all in pursuance of said law and the rules and regulations of the Department of the Interior and the Acts of Congress relating thereto.

XVI.

Denies that during all the time said contest decisions were pending, or after making final proof as claimed by plaintiff, or after cancellation of his first entry as stated by plaintiff, he continued to reside upon the land, or to improve, or reclaim, or cultivate it according to his original intentions, or that he was the sole settler on or possessor of the land, or entitled to a preferred right of second entry according to the land laws of the United States on May 18, 1910, if he should choose to make a second compliance or any compliance with the requirements of the homestead law; and while the defendant admits that the land in controversy was released from withdrawal, he denies that the same was released from every form of claim derived or estab-

33 lished under the Reclamation Act; or that the same was thereafter subject only to the general land laws of the United States, or to the rights provided by those laws.

XVII.

Denies that the plaintiff intended, or always intended to make the land entered, or attempted to be entered, his future home, or that he had no desire to skimp the extent of residence, or amount of cultivation, or any other requirement of the homestead law; and denies that when plaintiff made application before the Register and Receiver for second entry, he had any right to the preferred right of second entry as a settler under the general land laws, or that plaintiff's application for second entry was wrongfully withheld by the Register and Receiver until June 3, 1912; but states that said entry was lawfully withheld by the Acts of Congress and the Rules and Regulations of the Land Department of the United States; but denies that during all of said time plaintiff continued to reside on the land as theretofore, or that theretofore he had continuously resided on the same, or had improved, or reclaimed, or cultivated it according to his original intention, or according to the provisions of the homestead laws; or that during all of said time no other claimants settled upon, or improved part of the land, or gave evidence of intention, or wish so to do; or that regardless of the existing settlement, or occupation, or entry of the land by the plaintiff,

34 the Register or receiver on June 1, 1912, accepted the application of this defendant to homestead the same land, but admits that on or about said date the said Register and Receiver rejected the application of the plaintiff; but denies that the same was without a hearing, or without evidence, or contrary to law, or to the precedents of the Department.

XVIII.

Admits that plaintiff appealed said decision of the Register and Receiver to the Commissioner of the General Land Office, and to the Honorable Secretary of the Interior; but denies that neither of said officials considered the appeals, or that the decision was made by others; but admits that the decision of the Register and Receiver was sustained in each case; but denies that any error of law or disregard of precedent was made by either of said officials, or anyone acting for them, or that they stated as a reason for their decision the "disposition" of the Department; but the defendant states that the decision of said Commissioner and the Secretary of the Interior was in accordance with the laws of the United States and regulations of the Land Department of the United States, and the decision of the said Secretary of the Interior was final, and fully and finally adjusted and settled the claims and rights between the plaintiff and the defendant as to which should be entitled to said lands.

XIX.

Defendant denies that he applied to the Superior Court of Riverside County for a writ of ejectment which was refused to him, or that the defendant without leave of the Court forcibly assumed possession of the land either possessed, or improved, or reclaimed, or cultivated by plaintiff; and this defendant expressly denies that local Land Department Officials joined with defendant to induce Department of Justice Officials to lend the criminal processes of the law in aid of defendant, or that the same was done, or that plaintiff was arrested or put in jail for complaining to peace officers of the State, or for the ejectment of defendant by the official acts of such officers, or that plaintiff was prevented by such criminal proceedings, or any criminal proceedings, from appearing before the Department at Washington at the time set for said re-hearing or oral argument, or that defendant only was free to go; and denies that plaintiff abandoned said, or his improvement thereon, or failed to cultivate the same by reason of any wrongful act of defendant or anyone acting for him; this defendant denies that plaintiff appealed the decision of the Superior Court in Riverside County, granting writ of ejectment against the plaintiff, or that said appeal was perfected at all; or that during all of the time or any of the time the requirements of the homestead law had been completed, or were completed by the plaintiff, or that the Land Department wrongfully recognized the claim of the defendant, or that the Superior Court of Riverside County, on the supposed legal-
36 ity of any action of the Land Department granted a writ of ejectment, or that the defendant on March 9, 1914, or at any time relinquished his homestead right to the land from which plaintiff had been ejected except in the manner provided by law.

XX.

Denies that the defendant made no good faith effort to comply with the requirements of the homestead laws of the United States; and denies that the plaintiff made his contest charges plain or specific. Denies that the plaintiff was prevented by judicial compulsion from completing a claim under second entry, or that plaintiff was denied any right to which he is entitled, or was denied any right of consideration for any reason; and denies that there was any ex parte petitions, or applications for the consideration of the Land Department on the part of this defendant, or any applications other than that authorized by the laws and regulations of the Land Department; and denies that the defendant offered any scrip covering the lands in opposition to the prior claims of plaintiff, or requested the Department to make haste or dismiss the pending claims of plaintiff in order to clear the record for the acceptance of the new claim of the defendant; and denies that the plaintiff duly filed with the Register and Receiver his written protest under oath against the allowance of said scrip locations, on or about April 1, 1914; and denies that plaintiff's

37 protest was eliminated fraudulently, or that the Register of the local Land Office stated that the protest had been forwarded to the General Land Office by clerks in the local office and without waiting for action by the Register and Receiver, or that the new locations of defendant had been approved for patent on the report of local department officials that no protest had been made against such locations. Denies that the several actions, or any action of the Land Department, whereby the claims of the plaintiff were refused or rejected, was due to any extent to an erroneous theory that the Department has or had assumed of its authority and jurisdiction, or to any extent to the partisan determination of certain department officials to permit this defendant to secure title to the land herein for any reason or for no reason, or to deny the right of plaintiffs to the same land for any reason or for no reason, or that any partisan determination was propagated, or instigated, or participated in by this defendant by any confidential or secret means, or otherwise, or that thereby a bias or prejudice of the Department was produced against this defendant. Denies that by reason of any erroneous theory of authority, or jurisdiction held by the Department, or the condition of bias or prejudice existing, plaintiff has not been able to properly exhibit his case before the Department, or to get a fair trial of the exhibits made; but states that plaintiff has at all times had a fair trial before the different land departments of the Government, and states

38 that his appeals, and motions and petitions were refused or rejected or denied by right, and under authority of law and regulations of the Land Department; and denies that plaintiff has no other remedy for his alleged claims against this defendant; and denies that this defendant knew of any prior or legal appropriation, or improvement of said land by the plaintiff made in any lawful manner. Denies that all or any of the actions of the Land Department complained of by plaintiff were grossly or notoriously illegal or inequitable, or could convey no legal or equitable right to the defendant, or that in taking the action they did, the Department officials mistook or misapplied the provisions of the homestead or the reclamation laws of the United States, or disregarded the principles of the Constitution, or of equity or of justice, or through a partisan bias or prejudice applied the law to the uncontested facts and conditions of the case contrary to the law's intent, or contrary to the precedents at all times theretofore followed by the Department, or that such errors indicated or specified were committed in any way. Denies that the land department permitted the defendant to contest the entry by plaintiff for alleged default after the department had itself defaulted in every particular, or in any particular of its contracted obligations to plaintiff, or had subsequently so changed conditions as to impair to the point of destruction the opportunity of plaintiff to

39 proceed or contest proceeding without consideration or excuse to plaintiff as entryman under the changed condition, or otherwise; or that the Department provided to excuse the defendant from any requirements under existing conditions. Denies that the act or acts of the Land Department were grossly or notoriously illegal or inequitable by assuming that the preferred recog-

nition of the right of the defendant, or claimants of his exclusive class, to initiate rights to withdrawn land was necessary to the purpose of reclamation. Denies that the Land Department was grossly or notoriously illegal or inequitable in assuming that paragraph six and seven of the regulations of June 6, 1905 projecting a prospective right of defendant at such future time as the withdrawal might be effective provided defendant with a right existant pending the withdrawal, or before such projected future time, which was a bar to the completion of the right of plaintiff, or that the Land Department erred in permitting the defendant to make entry of the lands after vacation of the withdrawal order. Denies that the Land Department erred in making a first form withdrawal of an area of land embracing the land described in this action, after first having made a second form withdrawal embracing said land or accepting entry thereunder, or by making such first form withdrawal before any progress had been made under the second form withdrawal to assure water for the irrigation of the land withdrawn, or that the Land Department used the resultant circumstances, or any circumstances to discriminatively provide advantage, or provide to the defendant, at the expense or loss of the plaintiff. Denies that the Land Department erred by arbitrarily extending on the sole authority of its land decisions an alleged right of this defendant claimed by authority of the regulations of June 6, 1905, or that said regulations had been set aside or superseded by the regulations of January 19, 1909, or by decision, or that said Department erred in making such preference right prior or superior to the right obtainable by the plaintiff under the general land laws to land subject to those laws, or to no delegated reclamation authority of the Department. Denies that the Land Department erred by permitting the defendant to contest the reclamation entry of plaintiff for alleged abandonment prior to the time the first form withdrawal was vacated, and prior to the time the Government was ready to furnish water for the reclamation of the land entered; or by holding that the defendant could by any contingency initiate a right in advance of the eligibility of the land to the initiation of new rights; or by deciding that the allegations in defendant's contest affidavit were proven; or by failing to decide that any alleged default of this plaintiff was well cured long before notice of contest; or by not ordering a hearing before accepting the entry of defendant to determine if plaintiff had a preference right of second entry under the general land laws as claimed; or by not holding that any alleged right of this defendant ended with the relinquishment of the allowed entry of defendant, or that all pending claims of plaintiff were thereby rendered ex parte, or entitled to ex parte consideration; or by not holding that as the plaintiff had attempted to hold two quarter sections by homestead at the same time, or had elected to relinquish his allowed entry to the land herein described, that his homestead right, if any, was at all times upon such other land, or was never at any time a valid homestead claim to the land entered; or by refusing to consider, or fraudulently eliminating the protest of plaintiff to the scrip locations of defendant; or by making decisions based on "disposition" or not on law; or

by accepting the claims of this defendant, or in passing such claims to patent for any existing reason whatsoever, or by rejecting the claims of plaintiff, or by denying patent to him to said lands.

XXI.

Having no information or belief upon the subject sufficient to enable defendant to answer, and *plaing* his denial thereon, he denies that at the time the first form withdrawal cut off further entries, only a part of the area withdrawn had been previously entered, or that all of such entries were made in confident expectation of Government aid to reclamation; or that to enable entrymen to reasonably

undertake such reclamation, it was absolutely necessary that 42 co-operative opportunity be not restricted, or that because

of such restriction by the subsequent first form withdrawal of the land, nearly all the original entrymen were forced either to abandon the land entirely or to maintain a merely constructive residence thereon, or that this subsequent condition of suspension, or isolation could not have been foreseen or provided against by the entryman; or that these conditions caused many entries to reach a condition that would have constituted a default were the conditions unchanged. This defendant denies that he proceeded to take speculative advantage of the circumstances by initiating wholesale contests, or by yielding his many mooted rights thereby as opportunity offered for a consideration; or that his alleged right to the land claimed by plaintiff remained unsold only because no takers appeared caring to purchase a right to land possessed or improved by another; or that defendant stood idly by, or witnessed the improvement of the land by plaintiff for years without indicating any wish or intention to settle upon the same or claim or improve the same, or because to do so would be notice to the world of abandonment to other land claimed by the same form of right; or that defendant attempted to use any opportunity of exacting a profit for the abandonment of a right to land. Defendant denies that the Land Department while permitting defendant to contest the entry of plaintiff or

43 others for alleged default, or while presuming that time under the withdrawal must run against the entryman, but

not against the contestant, they recognized or held in other cases that irrigation enterprises other than those established by the Government were necessarily co-operative; or that a first form withdrawal of the land by limiting co-operative opportunity was a case of active interference by the Government preventing success of a private enterprise, or that the law provided in such cases that the entrymen were not obliged to do more until the Government had ceased its interference by abandonment of its project, or had so far developed it that entrymen could get water; or that the Department had proceeded in this case with knowledge that it was the intention of Congress at all times, or was expressed by its laws that land entered under the Reclamation Act should not be subject to contest for abandonment until the proposed system for reclamation was completed or water turned into the canals.

XXII.

Defendant denies that by reason of any error or errors of law or the partisan or arbitrary treatment of the facts, or by reason of an improper exercise of discretion, a series of patents has been granted by the Land Department to this defendant to the West Half (W. $\frac{1}{2}$) of N. E. $\frac{1}{4}$ of Section Eleven, (11) Township Seven (7) South, Range Twenty Two (22) East, S. B. M., July 28, 1915, patent No. 484487; or to the South East Quarter, (S. E. $\frac{1}{4}$) 44 of N. E. $\frac{1}{4}$ of said section, on July 28, 1915, patent No. 485834; or to the North East Quarter (N. E. $\frac{1}{4}$) of N. E. $\frac{1}{4}$ of said section, on August 6, 1915, patent No. 485833; or that by reason of any unlawful or unjust, or inequitable proceedings, as set forth by plaintiff, or otherwise, said patent was issued to the defendant, or that said patent would have been issued to the plaintiff under any of the terms or conditions as described by plaintiff; or that for such errors, or any errors, or perversions of right, plaintiff has no plain, or adequate or complete remedy at law. Denies that in the contest before the Land Office, or any contest, it was found or conceded, or established without dispute that the plaintiff had established a residence, or had made improvements, or that the improvements made before the initiation of contest was better than the average, or that any lack of cultivation, or absence which may have happened was due to the subsequent suspension of opportunity by reason of the first form withdrawal of the land rather than to the changed intentions of the entryman; or that some time prior thereto, or while plaintiff was served with contest notice, he was residing upon the land, or was then or for sometime prior thereto had been busily engaged in improving, or reclaiming, or cultivating the land according to his original intentions. Denies that plaintiff was denied any rights to said land, or in said contests, or in said hearings, or otherwise, contrary to the principles of the land laws of the 45 United States, as recognized by the unvarying precedents of the Land Department at all times thereto fore, to the effect that a withdrawal so made took the land beyond the operation of the Land Laws; or that the land Department adopted a theory of jurisdiction in this case, or any case effecting the land the subject of this suit, to provide for this defendant to appropriate a peculiarly preferred form of appropriation denominated an appropriation of the future right to appropriate land admittedly not then subject to appropriation, in order that this defendant, as a contestant, or otherwise, might evade a prohibition against appropriation; or that the Land Department, or any official of the Government, or any Department of the Government, either unlawfully, or arbitrarily, or otherwise, failed to decide the contest case of this defendant in accordance with the evidence or according to the precedents the Department had long established, or that any alleged default of the plaintiff as entryman under first entry was well cured long before the notice of contest; or that the said Land Department, or any Department thereof, permitted this defendant to contest the reclamation entry

of the plaintiff against the intentions or the laws of Congress; or unlawfully, or wrongfully permitted said contest prior to the time the first form withdrawal was vacated; and denies that the Land Department, or any department thereof, decided said contest against law or proper procedure by not holding that any alleged 46 right of this defendant, as conflicting with the existing rights of this plaintiff, ended with the relinquishment of the allowed entry of defendant, or that all existing or pending claims of the plaintiff were by such relinquishment rendered *ex parte* and entitled to *ex parte* consideration.

XXIII.

Defendant denies that when plaintiff, on or about December 1, 1902, made entry on the lands described in the complaint, that the plaintiff had made substantial, or good faith compliance with the requirements of the homestead or reclamation laws; or that no person appeared at the time or place, or offered evidence of a better, or any right adverse to the plaintiff, or that no notice was ever given plaintiff by the Land Office that the proof submitted by him was defective in any way; or that the Land Office, or the Land Office Officials in any way ignored, or mistook the law, or proceeded through a partisan bias, or prejudice, or refused at all or any times to consider proof; or that defendant was at any time admittedly without right to the land; or that plaintiff was at any time, or is now possessed with the equitable title to the land described, or entitled to the issue of patent by the Land Department of the Government, or entitled to bring suit in a court of equity for his right of title or right of possession to such land; or that plaintiff, after making proof continued to reside upon said land, or cultivated, or improved it according to his intention, or kept his claim of 47 title continually before the Land Department, or that the

Land Department did not consider the appeals or petitions, or protests of plaintiff. Denies that the land department in recognition of the presumed future right of the defendant, or in acceptance of a series of scrip applications made by him March 6, 1914, unlawfully or wrongfully issued to the defendant a patent on July 28, 1915, to the West Half of N. E. $\frac{1}{4}$ of said Section, patent No. 484487; or to the South East Quarter of N. E. $\frac{1}{4}$ of said Section, patent No. 485834; or on August 6, 1915, patent No. 485833 to the North East Quarter of N. E. $\frac{1}{4}$ of said Section. Denies that Congress, in order to enable homestead entrymen to make such entry or cultivation on said land, or for no other purpose, passed the Reclamation Act of June 17, 1902. Denies that because of the special conditions offered or contracted by the Secretary of the Interior, or any conditions so offered or contracted, plaintiff accepted the conditions, or made entry on said lands, or any part thereof at great sacrifice of other opportunity, or but for such special conditions thus offered or accepted, said entry would not have been made. Denies that plaintiff was then able or willing to perform his part in the proposed reclamation of the land, or gave evidence of his willing-

ness or good faith intention to comply with all the provisions of the homestead or reclamation laws by establishing residence on the land entered within thirty days thereafter; or that he did thereby 48 take stock or tools or implements for improving, or clearing, or preparing the land for cultivation for the purpose of co-operating with the Government as contracted. Denies that at this time the private estate land passed to the ownership of speculators of large wealth or political influence, who proceeded to incorporate a company called the "Land & Water Co.", or that through the political influence of its officers the Government's duties of diligence or cost reclamation of entrymen's land or lands was left thereafter to be fulfilled as it pleased or profited the company to do so; or that on September 12, 1903, the second form withdrawal was changed to a first form withdrawal, or continued as such to enable the company to effect the sale of its own lands, or to prevent the settlers on government land to become strong enough to independently regain the land entered. Denies that the said company was loath to furnish water to settlers, or that the plaintiff at any time reclaimed or cultivated or improved the land according to his intentions after making entry or attempted entry. Denies that as a condition of its lawful or logical status under first form withdrawal all contest rights or privileges pertaining to the homestead law were cut off by the operation of the withdrawal without regulative action of the Land Department; or that mistaking the law, or ignoring the law or the obligations contracted, or equity considerations existing with entrymen, the Land Department attempted on June 6, 49 1905, to separately provide by regulations for the consideration of contest rights or privileges. Denies that it became known to the defendant through his friendly relations with certain Land Department Officials that the aforesaid conditions or any conditions, had forced entrymen to exhibit technical flaws in the matter of residence or cultivation of the lands entered, or that proceeding on the advise, or assurance of such certain officials, or any officials, defendant sought to take speculative advantage of the plight in which prior entrymen had been placed by contesting, under the provisions of the regulations aforesaid, a number of entries including that of the plaintiff, for the purpose of selling the preferred rights. Denies that at the hearing of said contest it was found, or conceded, or established without dispute that plaintiff had established, or made improvements as required by law on said land, or that any lack of cultivation or absence was due to conditions not in the control of the plaintiff, or that the plaintiff was at all times as required by law residing on, or reclaiming, or cultivating, or improving the land when served with contest notice. Denies that departmental officials wrongfully, or unlawfully, or without right, or by reason of prejudice, or bias, decided that abandonment was proved; but states that the said Land Department rightfully, and in accordance with the laws of Congress and the rules and regulations 50 of the Land Department, made in pursuance thereof, recognized the preferred right of this defendant to enter said lands. Denies that any prejudice was created in the Department

Officials against the plaintiff, or that after hearing, or before final appeal, the Department realized any inconsistancy or illegality of the regulations aforesaid, or made other regulations of January 19, 1909, which in any way deprived this defendant of his preference right theretofore earned. Denies that the Land Department on June 1, 1912 accepted homestead entry of the defendant on the stated grounds of the preference right derived from the regulations of June 6, 1905, solely because of the bias or prejudice aforesaid; but states that the Land Department accepted the entry of the defendant under the Act of Congress hereinbefore referred to, and the regulations of June 6, 1905, and other regulations made in pursuance of law.

XXIV.

Denies that there was any desire of the defendant, or any growing desire of the defendant to deprive plaintiff of any land to which he was justly entitled; or that there was any growing prejudice, or any prejudice on the part of the Land & Water Company against the plaintiff; or on the part of the Land Department officials, or that there was any conspiracy between or among any of said parties to cause decisions or actions of the Land Department to be adverse to the rights of the plaintiff regardless of the merits of the 51 case, or otherwise. Denies that Department of Justice officials were induced to join, or with anyone else attempted to injure, or oppress, or threaten, or intimidate plaintiff in the free exercise or enjoyment of the right or privilege, or any right or privilege secured to him by the Constitution of the United States or to deprive him of his residence upon, or cultivation of any land; or that the Department of Justice officials consented to loan the criminal processes of the Government to shield or protect defendant from civil suits then or thereafter brought against him by the plaintiff, or to hamper, or harass, or impede, or prevent plaintiff from protecting his right to the possession of the land, or his right to the title thereto, in any court proceedings. Denies that in pursuance of any conspiracy, or to effect or accomplish the object of any conspiracy, or by advice or counsel of Land Department officials, or with criminal proceedings planned, or already planned in anticipation of resistance by plaintiff, he, on November 25, 1912, or at any other time, forcibly entered upon, or attempted to take possession of the land herein described, or then improved, or reclaimed, or occupied or cultivated by plaintiff, or then in the lawful or peaceful possession of the plaintiff, or that defendant was removed by the peace officers of the State acting in their official capacity, without the connivance, or approval, or assistance of the plaintiff; or that the plaintiff was arrested in pursuance of 52 a wire of this defendant, or that a deputy United States Marshal was dispatched, or arrested the plaintiff, except for the plaintiff's own violation of the law, and for which after a fair and impartial trial he was duly and legally convicted. Denies that any assistant United States Attorney demanded as a condition of

plaintiff's release that defendant be permitted to take possession of the land then in possession of the plaintiff, of that any pending court proceedings be dismissed, or future court complaint not made. Denies that said assistant United States Attorney reported to the Land Department at Washington, where appeals of plaintiff to the land decisions were pending, that plaintiff had been arrested for driving defendant off the land by force or violence, or that plaintiff had been released on his promise to vacate the land forcibly held by him, or to dismiss all actions then pending in the local courts. Denies that subsequently a Land Department official representing to act in his official capacity, or alleging positive knowledge that the decisions then pending in the Land Department would deny the right of plaintiff, demanded with heat that plaintiff vacate and allow defendant to assume possession of the land. Denies that thereafter the United States District Attorney so intimidated the local court by letter that the Justice thereof made private or verbal statement to defendant rescinding the trial judgment aforesaid, or that

thereupon defendant again forcibly assumed possession of the land, or that when plaintiff was again arrested the assump-

sistant attorney stated to the Court that the proceedings were had according to the ideas of the Land Office. Denies that any wrongful methods were used in any prosecution against the plaintiff, or that any evidence was manufactured against him, or that any reports circulated through the "Los Angeles Times" concerning plaintiff in any way assisted or helped toward his conviction, or that his conviction was in any other manner than by lawful and proper and legal means, or that plaintiff became bankrupt by reason of any wrongful acts of the defendant or anyone else, or that he was unable to properly conduct his suit against the defendant by reason of any act of the defendant or anyone else. Denies that plaintiff was not able to defend himself in the ejectment case in the Superior Court of Riverside County, California, as set up in paragraph XXVII of his amended complaint, or that as a result of his inability he was ejected from said land; but defendant states the facts to be that plaintiff appeared in said action and was well represented therein by an able firm of attorneys. Denies that the defendant's alleged preference right, or preferred right, was obtained or entry made for the purpose of speculation, or not for a home. Denies that plaintiff's contest application was rejected on the ground that his charges were mere conclusions.

54 Denies that the Department officials in any way failed to consider any lawful right of the plaintiff. Denies that in view of the contest notice served upon defendant, that he, defendant, solicited the Department, or the Department officials to cancel the entry of such other claimant, or restore defendant's status to such other land, or accept new scrip locations in the place of the entry plaintiff had applied to contest. Denies that the plaintiff, within thirty days from the filing of scrip locations, made protest in due form to said scrip locations, or that the Register of the Land Office stated to plaintiff that he would not approve of defendant's scrip applications in view of the known rights of

plaintiff, or his protest thereon; or that to prevent the Register from sustaining the protest of plaintiff, some other incumbent of the Land Office transmitted the scrip applications of defendant to the General Land Office in Washington, before the Register had opportunity to take action thereon, or destroyed the protest of plaintiff, or that thereafter the General Land Office approved said scrip application on the report of the chief of the Field Division that no protest had ever been made against said application, or that every effort of plaintiff to get a hearing on his protest was denied. Denies that plaintiff's appeal, or rights, or hearing was denied except for good and sufficient reason. Denies that in all the litigation before the Land Department between plaintiff and defendant no service was ever made upon plaintiff of any paper used or process

55 taken by him or his attorney, or that no service was made upon plaintiff except the aforesaid application; or that defendant

at any time became a stranger to the past record of the land by reason of filing his relinquishment thereof, or that he was not entitled to be heard thereon, or that in all other cases the Land Department has permitted defendant or his attorneys to file briefs, or statements, or private or confidential letters to the individual examiners in charge of the cases, except as permitted by the rules and regulations of the Land Department, or that the Land Department has considered or allowed defendant's claim without service or evidence of service of any of the papers upon the plaintiff. Denies that the acts of the Land Department are contrary to the spirit or intention of the Constitution, or against the laws of the United States, or are violative of all or any principles of equity, or justice, or fair dealing, or against public policy, or were applied through bias or prejudice culminating in a conspiracy; or that the Department was seized with animosity against the plaintiff or any one else, or that the Department was incapable of rendering a just judgment; or that the Department has proceeded squarely, or at all, against law in refusing to consider the right of plaintiff to complete his claim under first form withdrawal to land entered or settled upon before such withdrawal; or that the department is entirely without authority to refuse to consider it;

56 or that the Department has proceeded squarely against law in attempting to legislate by regulation as to matters not concerning reclamation; or that it has extended to the defendant any privileges or benefits not obtainable by plaintiff, or has subjected plaintiff to penalties or exactions not required of defendant; or that the Department has proceeded against law or public policy in assuming authority to impair or abrogate existing contract obligations with plaintiff in order to assume future obligations to defendant, or otherwise. Denies that the land department has proceeded directly or at all against the rule established by a long line of decisions, or against its practice at the time, or at any time, in other identical cases. Denies that any criminal processes of the Government have been solicited, or secured, or used to deprive plaintiff of his constitutional right to remain on the land entered until patent issued, or until dispossessed by the judgment

of a competent court, or that the rights of plaintiff were in any way effected before the department by reason of any criminal proceeding, or that the department has given evidence of the most extreme, or any extreme prejudice, or partisan intent. Defendant denies that plaintiff was at any time, or is now, entitled to the patent to said land, or any part thereof, or that patent would have issued to plaintiff had it not been that he was injured by bias or prejudice. Defendant denies that he, the plaintiff, was in any way injured by bias or prejudice, or that he has at any time 57 shown himself entitled to make entry upon said lands, or any part thereof, or have patent issued to him.

By way of further defenses, the defendant states:

I.

That under and in pursuance of lawful and regular rules of the Land Department of the United States, the right of a successful contestant to make entry upon the lands described in plaintiff's complaint was given, and which entry, as aforesaid, could be made within thirty days of notice that the lands involved had been released from the withdrawal order and made subject to entry; and this defendant alleges that he in all respects complied with the Act of Congress of 1880 giving him a preference right to make entry upon said lands, and rules and regulations of the Department of the Interior relating thereto; and in a contest hearing between plaintiff and defendant over said lands before the Land Office at Los Angeles, California, having jurisdiction of the parties and of the subject matter, the contest was decided in favor of this defendant; and that the action of the said local Land Office was in due course of time affirmed by the Secretary of the Interior of the United States, this being the highest authority to which an appeal could be taken in such cases; and that said decision of the local Land Office was in all respects affirmed by the said highest authority, and the preference right of this defendant to enter said land sustained, and that plaintiff's entry to said land was cancelled on or about April 19, 1909, and that the commissioner of the Land Office had sustained defendant's contest, and given defendant a preference right to enter said lands at a date prior to January 19, 1909; and while the regulation of the Land Department of June 6, 1905, giving this defendant the preference right in accordance with the Act of Congress of 1880 was still in force and effect, and in pursuance of defendant's said right, his entry on said lands was regularly made, and patent thereafter issued to him, and the plaintiff has no right, title, claim or interest thereto, or any deed to said lands.

II.

That heretofore, to-wit, on the 3rd day of June, 1912, the defendant instituted an ejectment action against this plaintiff in the Superior Court of Riverside County, California, the said land being

located in said Riverside County, California, and that the Court had jurisdiction of the plaintiff and defendant and of the subject matter, to-wit, the land mentioned in plaintiff's complaint herein; and that defendant made answer to plaintiff's complaint of ejectment, and was represented by attorney; and on a trial of said action, judgment resulted in favor of this defendant, who was plaintiff in said action, and against this plaintiff, who was defendant in said action, and said cause is No. 5280, and that there is attached herewith as 59 defendant's Exhibit- A, B, and C, the complaint, answer and the finding and judgment in said cause, and the same are hereby expressly made a part of the answer; and defendant states that in the said action the very matters here in controversy were in controversy, and fully and finally adjudicated in that said judgment was and is a final judgment, and that no appeal has ever been taken therefrom.

III.

By way of further defense, the defendant states that heretofore to-wit, on or about the 25th day of March, 1916, the plaintiff herein instituted, in the Superior Court of Riverside County, California, against this defendant, an action of the same nature involving the same land and the same identical state of facts as in the case at bar, and which case is No. 7011, and in said case the plaintiff therein and the plaintiff herein sought the same relief as in the case at bar, and that said Court had jurisdiction of said cause, and of the subject matter and of the parties; and the defendant herein, who was the defendant therein, appeared in said cause by demurrer to plaintiff's amended complaint, and thereafter, the said demurrer of the defendant was sustained to plaintiff's complaint and judgment was entered on June 30, 1916, in favor of the defendant, and that the complaint did not state facts sufficient to constitute a cause of action, and the amended complaint was dismissed; and that by 60 said judgment the very issues involved in the case at bar were fully and finally adjudicated, and that the plaintiff therein and the plaintiff herein, took no appeal from said judgment, and the time for appeal has now long since elapsed, and said judgment has become final and has fully adjudicated the very issues involved in this cause; and that there is attached herewith and made a part of this answer as defendant's exhibits "D," "E," and "F," respectively, the complaint, answer, and findings and judgment in said cause.

Wherefore, this defendant prays that plaintiff take nothing by this action and that defendant be discharged with his costs.

DUKE STONE,
Attorney for Defendant.

The following facts are agreed to:

1. That on December 1, 1902, William B. Edwards made land entry No. 10106 for the N. E. $\frac{1}{4}$, Section 11, T. 7 S., R. 22 E. S. B. M.;
2. That on the 17th day of July, 1902, the Commissioner of the General Land Office, Washington, D. C., issued a letter as follows, to-wit:

"E.
A. W. B.
114,039-1902.

Department of the Interior,
General Land Office,
Washington, D. C., July 17, 1902.

Subject: Withdrawal and Suspension from Entry.

Register and Receiver,
U. S. Land Office,
Los Angeles, California.

Sir:

The Honorable Secretary of the Interior by a letter dated June 27, 1902, and his order endorsed thereon dated July 2, 1902, has directed the temporary withdrawal from settlement or other disposition under the public land laws, until relieved from suspension, of certain townships, some of which lie within your district.

You are therefore directed to withdraw from disposal the following townships, so far as surveyed and on file:

Ts. 1 N.	Rs. 24 E. S. B. M.
" 1, 2, 3, 5 N.	" 25 " " "
" 1, 2, 3, N.	" 26 " " "
" 2 N.	" 27 " " "
" 1 to 16 S., inclusive	" 22, 23, 24, E. S. B. M.
" 9 to 12 S.	" 21 E. " " "

Please acknowledge receipt.

BINGER HERMANN,
Commissioner."

3. On September 12, 1903, the commissioner of the General Land Office addressed to the Register and Receiver at Los Angeles, California, the following communication:

E.
152,187-1903.
D. B.

Department of the Interior,
General Land Office,
Washington, D. C., Sept. 12, 1903.

Subject: Withdrawal for Irrigation.

Register and Receiver,
Los Angeles, California.

SIRS:

Following my telegram of the 18th instant, withdrawing lands in your district for irrigation purposes by whole townships you are now advised that by departmental direction of the 8th instant, 62 you will temporarily withdraw the following lands surveyed and unsurveyed from all forms of disposal whatever, under the first form of withdrawal authorized by Sec. 3 of the act of June 17, 1902 (32 Stats. 338).

San Bernardino Base and Meridian.

T. 9 S. R. 21 E. Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36.
T. 10 S. R. 21 E. Secs. 1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, 36.
T. 11 S. R. 21 E. Secs. 1, 12, 13, 24, 25, and 36.
T. 12 S. R. 21 E. Secs. 1, 12, and 13.
T. 7 S. R. 22 E. Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35 and 36.
Fractional T. 8 S. R. 22 E.
Fractional T. 10 S. R. 22 E.
Fractional T. " S. R. 22 E.
Fractional T. 12 S. R. 22 E.
Fractional T. 13 S. R. 22 E.
Fractional T. 7 S. R. 23 E.
Fractional T. 8 S. R. 23 E.
Fractional T. 13 S. R. 23 E. Secs. 35 and 36. T. 14 S. R. 23 E. Secs. 13, 24, 25, and 36.
Fractional T. 9 N. R. 22 E. Secs. 1, 2, 3, 11, 12, 13 and 14.
Fractional T. 10 N. R. 22 E. Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 34, 35 and 36.
T. 7 N. R. 23 E. Secs. 1, 2, and 12.
63 Fractional T. 8 N. R. 23 E. Secs. 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 34, 35 and 36.
Fractional T. 9 N. R. 23 E. Secs. 6, 7, 18, 19, 20, 21, 27, 28, 29, 30, 32, 33, and 34.
T. 4 N. R. 24 E. Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24.
T. 5 N. R. 24 E. Secs. 1, 12, and 13.
Fractional T. 6 N. R. 24 E. Secs. 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 22, 23, 24, 25, 26, 27, 35, and 36.

T. 7 N. R. 24 E. Secs. 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 34, and 35.
 Fractional T. 8N. R. 24 E.
 Fractional T. 4 N. R. 25 E.
 Fractional T. 5 N. R. 25 E.
 Fractional T. 6 N. R. 25 E.
 Fractional T. 3 N. R. 26 E. Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, and 26.
 Fractional T. 4 N. R. 26 E.
 Fractional T. 2 N. R. 27 E.
 Fractional T. 3 N. R. 27 E.
 Please acknowledge receipt hereof.

Very Respectfully,

W. A. RICHARDS,
Commissioner.

4. It is conceded and agreed that the homestead application of William B. Edwards dated December 1, 1902, was made under Section 2289 of the Revised Statutes of the United States, and under Act of June 17, 1902, for the land above described, said application was in due form duly certified by A. J. Crookshank, Register, and was accompanied by the usual and regular non-mineral affidavit in due form duly verified, together with the usual homestead affidavit duly sworn to by said W. B. Edwards; and that on December 1, 1902, Receiver's receipt No. 10106 in due and regular form was issued to said William B. Edwards by Arthur W. Kinney, Receiver of the Los Angeles Land District, Los Angeles, California; and *the* there was printed upon said Receipt so issued the following note:

"4—137.

Receiver's Receipt No. 10106, Application No. 10106, Homestead.

(Stamped in red:) This entry allowed subject to the provisions of the Act of June 17, 1902 (Public No. 161).

Receiver's Office,
 Los Angeles, Cal., Dec. 1, 1902, 1902.

Received of William B. Edwards the sum of Sixteen dollars — cents; being the amount of fee and compensation of Register and Receiver for the entry of N. E. $\frac{1}{4}$ of Section 11 in Township 7 South of Range 22 East S. B. M., under section No. 2290, Revised Statutes of the United States.

ARTHUR W. KINNEY,
Receiver.

62 \$16.00.

(Stamped in red:) This entry allowed subject to the provisions of the Act of June 17, 1902 (Public No. 161).

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

06—012

(Printed in Red.)

See note in red ink, which Registers and Receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose.

66 If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2,461 of the Revised Statutes."

5. That on October 22, 1884, leave of absence for one year from Sept. 1st, 1884, was granted to William B. Edwards from his said homestead.

6. That on January 30, 1908, Patrick H. Bodkin, defendant herein, filed his affidavit of contest against the said entry of William B. Edwards, which affidavit of contest and contest notice are in the following words and figures, to-wit:

"4—072.

Affidavit to be Filed Before Contest.

Department of the Interior,
 United States Land Office,
 Los Angeles, California, January 29, 1908.

I, Patrick H. Bodkin, of the town of Los Angeles, county of Los Angeles, State of California, being duly sworn and upon oath
 67 say: That I am well acquainted with the tract of land embraced in the homestead entry of William B. Edwards, No. 10106, made December 1, 1902, for the North East $\frac{1}{4}$ of Sec. 11, Tp. 7 South, Range 22 E.S.B., and know the present condition of the same; also that said William B. Edwards has abandoned the land for more than six months last past, that he never built a house on said land, or established residence thereon and made no permanent improvements on said land

*(and that said alleged absence from the said land was not due to his employment in the Army, Navy, or Marine Corps of the United States as a private soldier, officer, seaman or marine during the war with Spain, or during any other war in which the United States may be engaged); and this I am ready to prove at such time and place as may be named by the Register and Receiver for a hearing in said case; and I therefore ask to be allowed to prove said allegations, and that said homestead entry No. 10106 may be declared canceled and forfeited to the United States, I, the said contestant, paying the expenses of such hearing.

PATRICK H. BODKIN.

I hereby certify that the foregoing affidavit was read to the affiant by me; (or has been satisfactorily identified to me by Chas. A. Shaw), and that said affidavit was subscribed and sworn to
 68 before me at my office at Los Angeles, Cal., in the county of L. A., State of Cal., this 30 day of Jany., 1908, within my jurisdiction. 4.05 p. m.

FRANK C. PRESCOTT,
Register.

*NOTE.—To be stricken out, except in homestead cases where entry is contested on charge of abandonment.

(over).

6-829.

No. 1.

Also appeared, at the same time and place, James M. Oeheltree, residing at Yuma P. O. but residing in Imperial Co. Cal., county of —, State of — and —, residing at —, county of —,

State of —, who being duly sworn, depose and say: That they are acquainted with the tract described in the above affidavit of Patrick H. Bodkin, and know from personal knowledge and observation that the statements therein made are true.

JAMES M. OCHELTREE.

I hereby certify that the foregoing affidavit was read to the affiants by me; (or have been satisfactorily identified to me by P. H. Bodkin), and that the said affidavit was subscribed and sworn to by me at my office at Los Angeles, county of L. A., State of Cal., this 30 day of Jany., 1908, within my jurisdiction.

FRANK C. PRESCOTT.

69 (Endorsed:) 362. 4—072. Land Office at Los Angeles, California. Contest Affidavit in Homestead Case.—Patrick H. Bodkin against William B. Edwards.—Filed Jany. 30, 1908. Notice issued Jany. 30, 1908. Set for hearing April 3, 1908. Before Reg. & Rec. Los Angeles, California.—Note.—All of the above brief must be filed by Register or Receiver. 6-829."

"Original.

4—345.

Contest Notice.

Department of the Interior,
United States Land Office,
Los Angeles, Cal., April 3, 1908.

A sufficient contest affidavit having been filed in this office by Patrick H. Bodkin, contestant, against — entry No. 10103, made December 1st, 1902, for North East Quarter of Section 11, Township 7 South, Range 22 E. S. B. M., by William B. Edwards, Contestee, in which it is alleged that said William B. Edwards has abandoned the land for more than six months last past, that he never built a house on said land, or established residence thereon and made no permanent improvements on said land and that said alleged absence from the said land was not due to his employment in the Army, Navy or Marine Corps of the United States in any capacity in time of war. Said parties are hereby notified to appear, respond and 70 offer evidence touching said allegation at 10 o'clock a. m. on June 17th, 1918, before — — —, *the Register and Receiver at the United States Land Office in Los Angeles, Cal.

The said contestant having in a former affidavit filed — — —, 190—, set forth facts which show that after due diligence personal

71 *If the testimony is to be taken before the Register and Receiver, and not under Rule 35, the words in () parenthesis should be erased.

service of this notice can not be made, it is hereby ordered and directed that such notice be given by due and proper publication. *c.*

_____,
Register.
 O. R. W. ROBINSON,
Receiver.

Proof of Personal Service.

STATE OF CAL.,
County of Los Angeles, ss:

_____, being first duly sworn, on his oath says that he served the within notice by delivering a true copy thereof to each of the within-named contestants at the following-named times and places, to-wit: I served notice on Wm. B. Edwards May 4th 1908 9 a. m. Neighbours, Riverside Co., Cal.

(Sign.)

PATRICK H. BODKIN.

Subscribed and sworn to before me this 16 day of June, 1908.

O. R. W. ROBINSON,
Receiver.

_____,
County of —, ss:

_____, being first duly sworn, on his oath says that he served the within notice by delivering a true copy thereof to each of the within-named contestants at the following-named times and places, to-wit:

I served formal notice of Contest personally on Wm. B. Edwards while he was on the land above mentioned N. E. $\frac{1}{4}$ of Sec 11, May 4th, 1908. I also had written him one month before, the receipt of which he acknowledged, so that he was fully aware of the contest before he went back on the land to make present improvements.

(Sign.)

PATRICK H. BODKIN.

Subscribed and sworn to before me this — day of —, 190—.

_____,
 _____.
 _____.

72 (Endorsed:) (In blue pencil:) Edwards return this.
 Docket No. —. Patrick H. Bodkin vs. William B. Edwards.
 Notice of contest. Issued April 3, 1908. Served May 4, 1908.
 Filed in U. S. Land Office, Los Angeles, Cal., Jun. 16, 1908. 190.
 Frank C. Prescott, Register."

If personal service can be obtained the Register should erase the last paragraph before signing this notice.

7. That hearing was had upon said contest on the 17th of June, 1908, and on December 31, 1908, the Register and Receiver rendered their decision in the following language, to-wit:

"PATRICK H. BODKIN

vs.

WILLIAM B. EDWARDS.

Opinion of Register and Receiver.

December 1, 1902, William B. Edwards, made H. E. 10106 for the N. E. $\frac{1}{4}$, Sec. 11, T. 7 S., R. 22 E., S. B. M.

On proper showing, leave of absence was granted claimant for one year, from September 1, 1904.

January 30, 1908, Patrick H. Bodkin, filed, in this office, an affidavit of contest against said entry alleging that—

'William B. Edwards has abandoned the land for more than six months last past, that he never built a house on said land, or established residence thereon and made no permanent improvements on said land.'

Original notice of the above contest affidavit issued from this office January 30, 1908, April 3, 1908, contestant subscribed to 73 an affidavit before this office showing failure on his part to locate contestee and serve notice in person, and on which a new notice was issued and hearing set for 10.00 a. m. June 17, 1908.

Said last referred to notice, according to affidavit No. 1, of contestant, made June 16, 1908, was served on contestee May 4, 1908.

Contestant endorsed the following statement on the original notice:

'I served formal notice of contest personally on Wm. B. Edwards, while he was on the land above mentioned, N. E. $\frac{1}{4}$, Sec. 11, May 4, 1908. I also had written him one month before, the receipt of which he acknowledged, so that he was fully aware of the contest before he went back on the land to make present improvements.'

Hearing was had June 17, 1908, at which time contestant was present in person and represented by counsel; contestee was present but not represented, except by the efforts of the Receiver, who was present during the hearing.

The testimony of the witnesses, including contestee shows beyond question that allegations of contestant, were true, as to conditions then existing.

The testimony shows that at the date on which contest affidavit was made, no improvements of any kind were on the premises, that 74 contestee was absent and had been for a period in excess of six months, and that he had never cultivated any part of the land.

Contestee, according to his own testimony, went on this land shortly after date of entry, and commenced building a house, put down a well and erected a corral. He claims to have been kicked by one of his horses before the house was entirely completed, and that in order to obtain proper attention he left the claim about March 1, 1903, going to Imperial, Cal.—that after recovery from the injury sustained, he was without funds and went to work for Edgar Bros., grading contractors, at Imperial, Cal. and worked for them from March 8th to May 15th, 1903, when he leased some land in Imperial Valley from one Martin, and lived on and worked same until the following January; that from about January 1904, until in 1907, subsequent to date of contest affidavit, he lived on and worked other land in Imperial Valley, and only returned to the land in question at intervals, which he would not swear were not longer than six months. He claims to have been away from the land, for the reason that he could not make a living on same, owing to lack of water for irrigation purposes, and has offered testimony to that effect, though it is also shown that others in the same community managed to get along under similar circumstances.

He returned to the land in April, 1907, when he claims to have first received information of the contest in question, after 75 which time he attempted to have contestant dismiss same, and on his failure to do so, commenced the first active work of improving the land, other than that heretofore referred to, and some little effort which he claims to have expended on the occasion of a visit in September, 1904.

The testimony shows that subsequent to the visit last referred to, and prior to 1905, the improvements placed on the land were destroyed by unknown parties. Since contestee's return to the entry in April, 1907, he has made arrangements for and secured water for irrigating purposes, and at the date of the hearing had about five acres planted to corn, and 65 to 70 acres cleared, leveled, ditched and ready for crop; also had made about 4,500 'dobies' and had a foundation for a new home started.

On this residence and these improvements, contestee claims, in view of the conditions due to his inability to secure water for irrigating purposes and to the necessity for living elsewhere, in order to make a living, that his entry should be allowed to remain intact, subject to future compliance with the homestead law.

In the opinion of this office, such a course could not properly be pursued in view of all the circumstances shown.

Contestee admits that in 1907, prior to his return to the land, he registered and voted, at Imperial, then in San Diego County, and should not say that he had not voted prior to this time.

76 There clearly had been an abandonment of the land by contestee, and there has been an utter lack of good faith shown in his relations towards his entry. His improvements placed on the land subsequent to the date of the contest affidavit, were clearly made with knowledge of the contest and in view of same the

entry should be canceled and contestant should be awarded such preference right of entry as is provided.

It is so recommended.

FRANK C. PRESCOTT,
Register.
O. R. W. ROBINSON,
Receiver."

8. That said W. B. Edwards appealed in due time and form from said decision to the Commissioner of the General Land-Office, Washington, D. C. and on June 25, 1909 the Commissioner's decision was rendered in the following language:

" 'H.'
W. H. W.

Address only the Commissioner of the General Land Office.

Department of the Interior.
General Land Office,
Washington, D. C., June 25, 1919.

PATRICK H. BODKIN

vs.

WILLIAM B. EDWARDS.

H. E. No. 10106.

Cancellation Affirmed.

Register and Receiver.

Los Angeles, California.

SIRS:

By letter of March 27, 1909, you transmitted the record in
77 the above-entitled case, including defendant's appeal from
your decision recommending the cancellation of his entry.

December 1, 1902, William B. Edwards made H. E. No. 10106, for
the N. E. 1/4, Sec. 11, T. 7 S., R. 22 E.

January 30, 1908, Patrick H. Bodkin filed his affidavit of contest
against said entry, charging that:

William B. Edwards has abandoned the land for more than six
months last past; that he never built a house on said land, or estab-
lished residence thereon and made no permanent improvements on
said land, and that defendant's absence from the land was not due
to military or naval service, &c.

Defendant was personally served with alias notice of contest, May
4, 1908.

At the hearing before you, September 17, 1908, the parties ap-
peared and submitted testimony.

From the evidence adduced you found that it had been clearly established that defendant had abandoned the land; that there had been an utter lack of good faith on the part of the entryman; that the improvements placed on the land subsequent to date of contest, were made with full knowledge of the contest and induced thereby.

You therefore recommended that the entry be canceled.

78 Original contest notice issued in this case, January 30, 1908, and on April 3, 1908, contestant made affidavit, showing failure to locate contestee, at which time an alias notice was issued and served on defendant, while on the land in dispute.

Defendant had knowledge of the pending contest against his entry, prior to the time he returned to the claim, as plaintiff had mailed him a letter on March 26, 1908, informing him of the contest, and requesting him to sign and return a relinquishment inclosed with the letter. In answer to this letter, defendant went to the office of plaintiff and talked the matter over with him.

The testimony of the witnesses, including that of the defendant, conclusively established the truth of the charges made in the affidavit of contest.

The testimony shows beyond a question that, at the time the contest was begun, no improvements of any kind were then on the premises, that defendant had been absent for a long period, and that he had never cultivated any part of the land.

Defendant testified that he went on his claim shortly after he made entry and commenced building a home, put down a well and erected a corral; that he was kicked by a vicious horse sometime before the house was completed, and that in order to obtain proper attention, he left the claim about March 1, 1903, going to

79 Imperial, California, and that after recovering from the injury he was without funds and went to work for a firm of grading contractors at Imperial and worked for them from March 8 to May 15, 1903, when he leased some land in the Imperial Valley and lived on and worked the same until the following January; that from about January 1904, until in 1908, and subsequent to the date of the contest in this case, he lived on and worked other land in Imperial Valley and only returned to his claim at intervals of about six months each. He testified that these visits were all of short duration and were generally made in March and September of each year, and he would not positively swear that he was not away from his claim more than six months at any one time. Defendant's excuse for being away from the land is that he could not make a living on the same, owing to lack of water for irrigation purposes. He offered testimony to this effect, though it is shown that others in the same community managed to get along under similar conditions and circumstances.

Defendant returned to his claim about the first of April, 1908, and after failing to get the contest dismissed, commenced the first active work of improving the land, other than that heretofore referred to.

80 The testimony shows that long before the visit last referred to, and prior to 1905, the improvements placed on the land were destroyed by unknown parties. Since defendant's return to the land in April, 1908, he has made arrangements for and

secured water for irrigating purposes, and at the date of the hearing had about five acres planted to corn and sixty-five to seventy acres cleared, leveled, ditched and ready for crop. He also had the foundation of a house started.

From alleged residence, and these improvements, defendant claims, that in view of the conditions due to his inability to secure water for irrigating purposes and to the necessity of living elsewhere in order to make a living, that his entry should be allowed to remain intact, subject to future compliance with the homestead law.

Defendant admits that in 1907, prior to his return to the land, he registered and voted at the town of Imperial, and he would not say that he did not vote at other times prior thereto.

The facts in this case clearly show that defendant has never established a bona fide residence on the land covered by his entry. His father and mother resided at Imperial, California, about one hundred miles from this claim, and defendant admits that his home and residence has at all times been at that point, and that he has been engaged in business there, from a date since soon after making his entry up to the time that he had knowledge of the pending contest against his entry, and then came to the land. Defendant

claims that he is now prepared to meet the requirements of 81 the homestead law, and that he should be excused for his

defaults from 1902 to 1908, for the reason that the Government promised the homestead entrymen in the locality of this land that settlers would be furnished with water to irrigate their claims. He admits that he saw the Government circular relative to these Government projects, and if he did, he must have been then and there advised that he must meet all the requirements of the homestead law, and that he could not depend upon water being brought to the land by the Government and use that as an excuse for failure to meet the requirements.

In the instructions of the Department as to the arid lands, it was distinctly stated that no modification of the homestead law in its application to said lands could be made, as the Secretary of the Interior had no authority to extend the time for the establishment of residence, or to change any of the conditions of the homestead law as to the maintenance of such residence and cultivation of the land. See 32 I. D., 633.

Your decision being clearly right the same is affirmed.

Defendant's entry is held for cancellation, subject to the right of appeal.

82 So note upon your records, notify the parties hereof, and the defendant of his right of appeal to the Department.

Respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

BOARD OF LAW REVIEW,
By JOHN McPHEAUL."
M. G. O.

9. That in due time and form said William B. Edwards appealed from the decision of the Commissioner of the General Land-office to the Secretary of the Interior and on January 6, 1910 the Secretary's decision was rendered in the following language, to wit:

F. W. C.
E-1979.

Address only the Secretary of the Interior.

"Department of the Interior,
Washington, Jan. 6, 1910.

PATRICK H. BODKIN

v.

WILLIAM B. EDWARDS.

Appeal. Affirmed.

Los Angeles 02472, "H."

(Stamp:) Received Jan. 8, 1910, G. L. O.

The Commissioner
of the General Land Office.

SIR:

William B. Edwards has appealed from your office decision of June 25, 1909, which affirms the action of the local office holding for cancellation his homestead entry No. 1010 $\frac{1}{4}$, made December 1, 1902, for the N. E. $\frac{1}{4}$ Sec. 11 T. 7 S., R. 22 E., Los Angeles, California.

Said actions resulted from a contest filed January 30, 1908, by Patrick H. Bodkin, alleging that the entryman had abandoned the land for more than six months; that he never built a house on said land, or established residence thereon, and made no improvements on said land.

A hearing was had before the register and receiver September 17, 1908, both parties being present and both submitting testimony.

The record in the case has been reviewed. The testimony is correctly and quite fully set forth by your office.

The entryman appears to have prepared his own appeal, and has submitted an argument in support of it. He is evidently a man of considerable education. He also testified at considerable length. His testimony is quite frank, and bears the stamp of truth.

From his own testimony, it clearly appears that he failed to comply with the law in the matter of residence. Indeed, his actual home was in another county, where he qualified as a voter by swearing that he resided there. He states that he visited the land

about every six months, staying only a few days at a time. He had no house to live in. In fact, he had no house completed at date of hearing, more than six years after entry.

84 He evidently did considerable work on the land, in cultivating, digging brush, etc.; but this work was after he had personal knowledge that the contest had been filed. He seems to think it a great wrong and injustice that another may reap the benefit of his labors. The Department, under the plain facts in the case, especially the facts as shown from claimant's own frank testimony, is powerless to give relief.

The action appealed from is affirmed, and the papers in the case are herewith returned.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

Enclosures.

10. Plaintiff then introduced in evidence the decision of the assistant Commissioner of the General Land Office dated April 19, 1910. The document referred to was in the following words and figures:

"1 inc. McD.

In reply please refer to Los Angeles 02472.

'H'

J. L. M.

4-400.

Department of the Interior,
General Land Office,
Washington, D. C., April 19, 1910.

P. H. BODKIN

v.

W. B. EDWARDS.

H. E. No. 10106, for N. E. 1/4 Sec. 11, T. 7 S., R. 22 E.

Register and Receiver,
United States Land Office,
Los Angeles, California.

Sirs:

In reference to the above-entitled case, I inclose herewith a copy of the decision of the Secretary of the Interior, dated April 85 12, 1910, denying the motion for review of departmental decision dated Jan'y 7, 1910, which was adverse to Edwards.

Said case is accordingly hereby closed. Notify the parties in interest.

The entry has this day been canceled.
So note on your records and allow Bodkin thirty days to apply for the land.

Respectfully,

S. V. PROUDFIT,
Assistant Commissioner."

6-1614.

11. That thereafter, to-wit: on February 16, 1909 said Edwards filed notice of intention to make final five year proof to establish his claim to the land described in said entry; that said notice of intention to make proof was received and filed by the Register on the 16th day of February, 1909, and thereafter, to-wit: under date of February 18, 1909 notice for publication of said entryman's intention to make final five year proof was issued by the Register and was thereafter posted and published as required by statute, and proof thereof duly made and filed.

12. That on April 23, 1909, pursuant to said notice of [said Edwards filed in due form the usual non-mineral affidavit and] * intention to make proof said Edwards filed in due form the usual non-mineral affidavit and produced before the Register and Receiver at the Los Angeles Land Office, Los Angeles, California, two of 86 the witnesses named in his said notice who together with the entryman, plaintiff herein, testified as follows, to-wit:

"Homestead Proof—Testimony of Witness."

ALL H. GILSON, being called as witness in support of the Homestead entry of William B. Edwards for N. E. $\frac{1}{4}$ Sec. 11, 17 S. R. 22 E. V. B. M, testifies as follows:

Ques. 1. What is your name, age, and postoffice address.

Ans. All H. Gilson, 48 years, Blythe, Cal.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am with both.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. Desert farming land covered with mesquite.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Jan. 1, 1903.

[*Words enclosed in brackets erased in copy.]

Ques. 6. Have claimant and family resided continuously
 87 on the homestead since first establishing residence thereon?
 (If settler is unmarried, state the fact.)

Ans. Unmarried. No. He has been away once on account of injury & other times to work for a living.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He lived on this land 4 to 5 weeks 2 or 3 times a year. Had a leave of absence one year. He has lived there continuously since April 1898.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 50 acres—2 years. Planted crops 3 years.

Ques. 9. What improvements are on the land, and what is their value?

Ans. House, adobe; 16 x 32 ft.—corrals, well, clearing 100 acres. Value—\$2,600 to 2,800.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

88 Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. I do.

(Sign plainly with Christian name.)

(Signed)

W. H. GILSON

"Homestead Proof—Testimony of Witness."

GEORGE McFEE, being called as witness in support of the Homestead entry of William B. Edwards for N. E. $\frac{1}{4}$ Sec. 11, T. 7 S. R. 22 E. S. B. M., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. George McFee, 55 years; Neighbors, Cal.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am with both.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Desert farming land.

89 Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Jan. 1903.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Unmarried. No. He has been away working for a living.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon the cultivated land during such absence?

Ans. In April 1903 he was hurt and went away for medical assistance. Returned in fall of 1903, stayed a month or two. Went away to work. Returned in the winter & spring. Returned every few months. During last two years has resided there continuously.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. 90 acres—two seasons.

Ques. 9. What improvements are on the land, what is their value?

Ans. House; adobe; 16 x 32 ft. good house. Well & Corral—100 acres cleared. Value \$2,600—\$2,800.

90 Ques. 10. Are there any indications of coal, saline, or minerals of any kind on the homestead? (If so describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. I think so.

(Sign plainly with full Christian name.)

GEORGE McFEE.

"Homestead Proof—Testimony of Claimant."

WILLIAM B. EDWARDS, being called as a witness in his own behalf in support of homestead entry, No. 10106, for S. E. $\frac{1}{4}$ Sec. 11, T. 7 S. R. 22 E. S. B. M., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. William B. Edwards; 47 years; Blythe, Cal.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am. Illinois.

91 Ques. 3. Are you the identical person who made homestead entry, No. 10106, at the Los Angeles, Cal. land office on the

1st day of Dec. 1902, and what is the true description of the land now claimed by you?

Ans. I am. N. E. 1/4. See 11, T. 7 S., R. 22 E. S. B. M.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. Began building house in Jan. 1903. Adobe & lumber 12 x 14 ft. Built another house May 1908, 16 x 32. Corral, Well, Pump. 90 acres cultivated. 10 acres more cleared. Value \$2,500.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Unmarried. No. Have been away a good deal working for a living.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I went on land in Jan. 1903. I was injured three months later & left, returning in Aug. 1903. Stayed a few weeks and sent away again to work. Returned in Mar. 1904, stayed several weeks. Returned again in Aug. 1904. My absences since average about the same. Returned again in Sept. 1905. I had a year's leave of absence.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. Have 90 acres in cultivation. 2 seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Desert farming land.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. D. L. Entry in Los Angeles land office in 1903—I abandoned it & do not remember its description.

(Sign plainly with full christian name.)

(Signed)

WILLIAM B. EDWARDS."

(Further printing.)

13. That on April 23, 1909, William B. Edwards paid the customary and usual fees for taking and transcribing the aforesaid proposed final proof, and made and filed the final affidavit required of homestead claimants in due form.

14. Plaintiff then introduced page 78 of the Homestead Contest Docket of the Los Angeles Land Office which is as follows:

"Homestead Contest Docket, P. 78.

362.

10106, H. E. Dec. 1/02 N. E. $\frac{1}{4}$.

117,522E.

12472.

14839.

PATRICK H. BODKIN, Los Angeles,

vs.

WILLIAM B. EDWARDS, Neighbors, Cal.

94

Jany.	30/08.	Aff. of Contest filed. Notices issued. Hearing Apr. 3/08.
Apr.	3/08.	Aff. for new notice filed; Notices issued. Hearing June 17/08.
June	6/08.	Subpœnas issues for J. E. Neighbors, C. C. Longworth, Mary Meyer, T. N. Chapman, Joseph De Frain, Mrs. Joseph De Frain and C. A. Hollister on behalf of contestant.
Jan.	17/08.	Authority of Andrew G. Park; Atty. for contestant filed Trial had; all parties present closed 4 P. M., June 18/08.
Dec.	31/08.	Decision of R. & R. in favor Contestant & recommending the awarding of a pref. right of entry.
Jan.	2, 1909.	Contestee not by Reg. mail at Neighbors, Cal. of decision of R. & R. Personal service <i>service</i> accepted Jany. 9/09.
Jan.	8, 1909.	Service of decision accepted by contestant.
Jan.	9, 1909.	Service of decision accepted by contestee.

Jan. 22, 1909. Appeal of contestee filed, but returned to him at Neighbors for evidence of service of copy on contestant.

Feb. 5, 1909. Appeal of contestee filed.

Feb. 13, 1909. Brief of contestee on appeal filed, retd. for correction.

95

Mar. 10, 1909. Brief of contestee on appeal filed.

Mar. 27, 1909. Papers to G. L. O.

H. June 25/09. Affirms decision of R. & R. holds entry for cancellation.

Sept. 27, 1909. Appeal to Secy. filed and returned for correction.

Oct. 21, 1909. Appeal to Secy. filed corrected.

H. Oct. 18/09. Calls for report.

H. Jan. 13/10. Encloses Depl. dec. of Jan. 6, '10, affirming dec. of Hon. Commissioner. Letter received from W. B. Edwards dated Mar. 15/10, notifying this office that he had that day sent a motion for review to the G. L. O. & served a copy on P. H. Bodkin.

H. April 19/10. Encloses copy of Depl. dec. April 12/10 denying motion for review; Entry cancelled. Bodkin allowed 30 days to apply for land. Case closed."

15. On September 3rd, 1914, Edwards filed with the Register and Receiver at Los Angeles, California, a motion to consider his final proof which had been offered on the 23rd day of April, 1909. Said motion was as follows:

96 Received Sep. 3, 1914, U. S. Land Office, Los Angeles, Cal.

"Before the Register & Receiver, Los Angeles Land Office.

02472.
"H."

Ex Parte WILLIAM B. EDWARDS.

Motion to Consider Proof.

William B. Edwards hereby moves that his final proof made April 23, 1909, (Serial number 02472) consequent to entry made Dec. 1, 1902, (H. E. No. 10106) be now considered. (N. E. $\frac{1}{4}$ Sec. 11, T. 7 S. R., 22 E. B. M.

That consideration of this proof has heretofore been erroneously subordinated to consideration of the alleged prior and superior right of one Patrick H. Bodkin, a right claimed to have been initiated while the land was subject to a first form withdrawal and therefore

while not subject to the initiation of any right, or that the entry on which proof was based was subsequently cancelled in furtherance of such supposed right of Bodkin, is not now an issue in this case, Bodkin having relinquished his entry based on such supposed right March 9, 1914, and as this case thereby became *ex parte*, no excuse now exists, as no reason formerly existed while the final proof of Edwards—made under the hardship and handicap of the withdrawal, and of contest wrongly and resultantly allowed with 97 the withdrawal, should not be considered, as the Department is not obligated to consult the future wishes, or consider the prospective future rights of a new claimant, before considering the existing claim of a prior entryman.

Respectfully submitted,

WILLIAM B. EDWARDS.

(Endorsed:) William B. Edwards, *ex Parte*. Motion to consider proof. Serial No. 02472, H. E. No. 10106 for N. E. $\frac{1}{4}$ Sec. 11, T. 7 S., R. 22 E., S. B. M.

16. Upon this motion the Commissioner on the 30th of March, 1915, rendered the following decision:

"In Reply Please Refer to Los Angeles 02472.

"F. S." S. H. C.
1 x C. F. D.
1 x R. & R.
J. T. N.

Address only the Commissioner of the General Land Office.

E10.

Department of the Interior,
General Land Office,
Washington, March 30, 1915.

Motion to Consider Proof Denied.

Register and Receiver,
Los Angeles, California.

SIRS:

December 1, 1902, William B. Edwards made Homestead Entry 02472 for the N. E. $\frac{1}{4}$ of Sec. 11, T. 7 S., R. 22 E., and on 98 January 30, 1908, Patrick H. Bodkin filed a contest, pursuant to which the entry of Edwards was canceled April 19, 1910, and the contest case of Bodkin vs. Edwards was closed.

April 23, 1909, prior to said cancellation, Edwards offered final five-year proof in support of his said entry.

May 18, 1910, William B. Edwards filed application to make a

second homestead entry for the said N. E. $\frac{1}{4}$ under serial number 013583, alleging residence on the tract since April 18, 1910. Said application was suspended, pending decision as to the character of the land.

The said land was withdrawn under the first form of withdrawal September 8, 1903, and was restored to settlement April 18, 1910, and to entry May 18, 1910.

May 18, 1910, Patrick H. Bodkin filed his homestead application for the said N. E. $\frac{1}{4}$ of Sec. 11 under serial number 010652, in the exercise of the preference right acquired under his successful contest against Edwards. Said entry was allowed on June 1, 1912, and on June 3, 1912, the application of Edwards was rejected for conflict therewith. Edwards appealed, but the said action was affirmed May 27, 1913. A motion for re-hearing was denied August 21, 1913, and petition for the exercise of supervisory authority was denied October 2, 1913. September 11, 1913, Edwards filed his application to

99 contest the homestead entry of Bodkin, charging that the latter never legally established a residence upon nor cultivated the land, and that his entry was made for speculative purposes. Said application was rejected by your office upon the ground that the allegations were res judicata, and that they were insufficient to warrant a hearing. Said decision was affirmed by this office October 31, 1913, and on appeal said decision was affirmed by the Secretary of the Interior March 30, 1914, and the case closed under amended Rule 83, of Practice, reference being had to 40 L. D., 175. April 1, 1914, Edwards filed a petition for the exercise of supervisory authority, a motion for reinstatement of his canceled homestead entry, and a protest against three soldier's additional application of Bodkin,—022869, for the N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of said Sec. 11, 022871, for the W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ of said Sec. 11, filed March 6, 1914, upon which latter date Bodkin relinquished his said homestead entry, 010652. Said motions were considered by the Secretary on April 20, 1914, the Secretary stating, with reference to the Bodkin relinquishment.

*** no rights accrued to Edwards by virtue thereof, his contest affidavit then pending on appeal being insufficient in substance. His rights under his original entry for said lands ended upon cancellation of the entry under Bodkin's contest. The petition is denied."

100 The contest case of Edwards vs. Bodkin was closed May 16, 1914.

September 23, 1914, final certificate issued in the case of Soldier's Additional Homestead Entry 022869, by Patrick Henry Bodkin, assignee, involving the right of Peter Dieckman for the N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of said Sec. 11.

September 23, 1914, final certificate issued in the case of Soldier's Additional Homestead Entry 022870, by Patrick H. Bodkin, assignee of Benjamin F. Howland, for the S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of said Sec. 11.

By office letter of December 23, 1914, application for Soldier's Additional Homestead Entry 022871, by Patrick H. Bodkin, assignee of the Estate of Gilford M. Dunn, for the W. 1/2 N. E. 1/4 of said Sec. 11 was allowed, and the decision of the Secretary of October 31, 1914, was promulgated, and the protest of W. B. Edwards was dismissed. In said office letter of December 23, 1914, it was stated,

"It appears from the foregoing that the right of Edwards to the N. E. 1/4 of said Sec. 11 has been twice adversely determined by the Department. His request for suspension of action and for remanding the alleged protest to your office is, therefore, denied, and it is held that Edwards has no right of appeal from this action. You will, however, notify Edwards that final action will be deferred for twenty days from service of notice hereof to enable him to 101 apply to the Secretary of the Interior for an order certifying the record under Rules 78 and 79 of the Rules of Practice."

By your letter of September 12, 1914, you transmitted a motion filed September 3, 1914, in your office by W. B. Edwards, to consider his final five-year proof submitted April 23, 1909, in support of his Homestead Entry 02472, which, as hereinbefore stated, was canceled April 19, 1910, pursuant to the contest filed January 30, 1908, by Patrick H. Bodkin. This case has been the subject of careful consideration before this office, and Edwards has energetically endeavored to defeat the Bodkin contest and filings. The entire proceedings have been passed upon by the Department, as above stated. It appears, therefore, that the entryman has no standing in court, and in consequence his motion to consider final proof submitted September 23, 1909, in support of his entry, now canceled of record, cannot be entertained. The motion is accordingly denied; and, in view of the record in this case and of previous actions taken by the Secretary wherein it has been held that (see decision of the Secretary April 20, 1914).

"* * * his rights under his original entry for said lands ended upon cancellation of the entry under Bodkin's contest."

102 said motion to submit proof is denied without right of appeal, and the case is hereby closed.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

D. A. MILLRICK.

3-22-D. M. D.

17. On April 6th, 1915, the Secretary of the Interior rendered a decision in the words and figures as follows, to-wit:

D-26244.

"H."

Department of the Interior

Washington.

WILLIAM B. EDWARDS

v.

PATRICK H. BODKIN.

Los Angeles 010,652.

Denial of Application to Contest. Petition Denied.

Petition for the Exercise of Supervisory Authority.

April 6, 1915.

March 30, 1915, the Department affirmed the action of the Commissioner of the General Land Office, rejecting the application of William B. Edwards to contest the homestead entry of Patrick H. Bodkin, for the N. E. 1/4, Sec. 11, T. 7 S., R. 22 E., Los Angeles, California, land district.

A motion for rehearing was filed by Edwards, which was the subject of departmental decision of May 28, 1914, whereby the motion was denied.

103 A petition has now been filed by Edwards, requesting the exercise of the supervisory authority of the Department and for reconsideration of the case.

The application to contest was denied for the reason that the charges were not sufficient upon which to order a hearing. The contest was denied and the case closed.

In his present petition, the case is reargued with reference to the rights of Edwards under a former entry for this land, and the rights of Bodkin under his suspended preference right awarded for successful contest of Edward's entry. The time Edward's entry was canceled the land was within a reclamation withdrawal and Bodkin's preference right suspended. After the land was released from the withdrawal Bodkin exercised his preference right and made entry, and the contest here in question was then attempted by Edwards.

The petition states that Bodkin filed relinquishment of his entry March 9, 1915, and that Edwards should now be accorded preference right of entry by virtue of his application to contest, and also his application to make second entry.

As stated above, however, the contest was held insufficient and was, therefore, denied and the case closed. Any application to make second entry filed by Edwards while the land was embraced in the entry of Bodkin could not be made the basis of claim for preference right by Edwards.

104 No reason is seen for disturbing the action heretofore taken. Therefore, the petition is denied.

(Signed)

ANDRIEUS A. JONES

ANDREUS A. JONES,
First Assistant Secretary.

18. Plaintiff then introduced in evidence the portion of the Register of Homestead entries kept in the local Land-office relating to the homestead entry of William B. Edwards, which entries were and are as follows:

Mr. Willis: I will just read this. It is just one small entry. The rest I have in a copy form. It reads as follows: "Number of application 02472 and 1016. Date of application, December 1, 1902. Tract entered, Northeast quarter, Section 11, Township 7 South, Range 22 East, 160 acres. Name of applicant: William B. Edwards. Residence, Ehrenberg, A. T. Fees, \$10. Commissions, \$6." Under "remarks" "Act June 17, 1902." "Kind: Hd. (1010). Receipt No. 16,288. Serial No. 02,472. Name, William B. Edwards. Address, Neighbours, Cal. Description of Land, Section N. E. 1/4 11, Township 7 S., Range 22 E., Area 160.

Date:

Notations.

1208

Nov. 30. Entered in accordance with "M" Nov. 7/08, a/c contest by Patrick H. Bodkin.

105

1909

Feb. 16. Notice of final proof filed.
 " 19. Notice of final proof issued R. and R. 4/23/09.
 Apr. 23. Final Proof Offered 4/23 1909 suspended pending
 contest of Bodkin.
 May 7. Protest special agt. filed.
 June 30. "H" of June 25, '09 holds entry for cancellation.
 July 16. Claimant notified of "H" of 6/25/09.-Reg. mail.
 Oct. 22. "H" of Oct. 18, '09 calls for report on "H" 6/25/09.
 Oct. 22. Appeal filed by Contestee Oct. 21, '09.
 Nov. 4. " " " " to Comr.
 Nov. 23. "H" Nov. 18/09, Papers to Seery. on appeal.

1910.

Jan. 18. "H" of Jan. 31, 10 transmits Dept'l decision in case Bodkin vs. Edwards.

1910.

Jan. 20. Notice "H" 1/12/10-to Claimant-reg. mail.

Feb. 19. Service

Apr. 25. "H" 4/19/10, cancels entry under contest of P. H. Bodkin.

May 4. Notice" to Edwards.

" 4. " " " Andrew G. Park, Atty. for Bodkin by reg. mail.

May 10. Service accepted Reg. mail 5/7/10 by Park, Attorney for Bodkin.

106

1913.

June 5. Supplemental Brief for Appellant filed.
 " 11. " " trans. G. L. O.

1914.

Sept. 3. Application for motion to consider final proof filed.
 Sept. 27. Appln. for motion to consider final Proof to G. L. O. for consideration.
 Apr. 3, 1915. "F. S." of 3/30/15 finally closes the case, denies motion to consider final proof, and without right of appeal.
 " 6. Copy to claimant.
 June 18. Check No. 977 returns \$6 to Neighbours.

I, Vene Bloomer, Register of the United States Land Office, hereby certify that the above and foregoing is a true and accurate copy of the Serial Register record relative to the homestead entry therein mentioned, which was transmitted to this Office from the Los Angeles Office at the time this Office was established.

VENE BLOOMER,

Register.

19. There was thereupon introduced in evidence, entries in the serial docket now in the Land-office at El Centro, California, touching upon the homestead application of Patrick H. Bodkin for the same land.

107 "Kind: Hd. Serial No. 010,652.

Name, Patrick H. Bodkin.

Address, Neighbours, Cal. 1/14/14.

Description of land, section N. E. 1/4 11, township 7 S., range 22 E., area, 160.

Notations.

1910.

May 18. Application Suspended pending hearing as to character of land U. S. Surv. Gen. letters 4/16 & 5/13 10 receipt No. 363993 Fees \$16.

1912.

May 28. Address changed to 464 E. Adams St. L. A.

" 22. Restored Telgm. May 22, 1912.

June 1. Entry allowed.

Notice of Election mailed June 20, 12.

Nov. 26. "H." 11/21/12 rejects Edwards appln. & holds Bodkins' entry intact.

" 26. Service accepted by F. E. Dunlap.

Dec. 3. Affidavit filed stating settlement made on entry Nov. 25, 1912.

1913.

Jan. 21. Appeal filed by Wm. B. Edwards (010583).
 Meh. 3. Add'l report on H. 11/21/12 sent to G. L. O. 108

Sept. 10. "H." 9/4/13 transmits dept. decision denying motion for hearing and leaving this entry intact.

9/20 13. Bodkin advised Seey. denies motion for rehearing and leaves entry intact.

Nov. 4. H. 10/31/13 affirms R. & R. subject to appeal.
 " 10. Notice of H. 10/31/13 sent to claimant; Reg. Mail.

Feb. 4, 1914. H. of 1/30/14 calls for evidence of service.

Feb. 5, 1914. G. L. O. advised we have requested P. M. for duplicate.

Meh. 3. Evidence of service to G. L. O.

Mar. 6, 1914. Canceled by relinquishment. 2.00 P. M.

May 23, 1914. H. of 5/16/14 closes case, transmitting deptl. decision rejecting Edwards' appln. for reinstatement of 010583.

June 1. Copy of H. 5/16/14 to Edwards 010583.

Jun. 16, 1914. H. of 6/10/14 transmits dept'l decision denying motion for rehearing filed by Edwards and closing case.

1915.

July 12. F. S./D. 7/8/15 dismissing protest of Edwards.
 " 19. Notice of F. S. D. 7-8-15 sent to claimant Ord. Mail. El Centro, California, February 3, 1919.

I, Vene Bloomer, Register of the United States Land Office, 109 do hereby certify that the above and foregoing have been compared with the original now on file and in use in this office, and is a true and accurate copy thereof.

VENE BLOOMER,
Register.

20. There was then introduced in evidence, a letter dated September 28th, 1914, signed by the Register and Receiver of the United States Land Office at Los Angeles, touching the question of the protest filed by plaintiff as to the scrip applications of the defendant. This letter was read into the record and is as follows:

"Department of the Interior,
 United States Land Office,
 Los Angeles, Calif., Sept. 28, 1914.
 (Place) (Date)

Mr. W. B. Edwards,
 50 Stillman Ave.,
 Redlands, Cal.

SIR:

We have the honor to acknowledge receipt of yours of the 26th inst., and in reply beg to state we have conferred with Mr. Buren,

former Register of this office, in regard to the matter therein referred to and he states that the information given you with reference to the right of appeal in the event of your protest being rejected was correct.

It appears, however, that these protests were forwarded to the 110 General Land Office at Washington by the clerks of this office

without any action having been taken thereon. We are of the opinion that action should have been taken on the protests by this office and we think should have either been allowed or rejected and notice thereof sent you. Since they are now in the General Land Office it appears that the proper thing for you to do is to communicate direct with the Commissioner and request that he either return the protests to this office for action or act upon them himself.

Very respectfully,

JOHN D. ROCHE,

Register.

ALEX. MITCHELL,

Receiver.

P. S.—Since writing the above, we find copy of a letter addressed to this office, from which you will note that the protests filed by you were acted upon by the General Land Office at Washington, D. C."

21. In connection with the same subject there was introduced a letter of the Commissioner dated October 5th, 1914, which are as follows:

"In reply please refer to E. S. D.—Los Angeles 022,869-70-71-
M. A. M. —
2 L. 1 x (R. & R.)

Address only the Commissioner of the General Land Office.

Patrick H. Bodkin, Assignee; involving the right of Peter Dieckmann (022869); Benjamin F. Howland (022870); and Gilford M. Dunn (022871).

111

Department of the Interior.

General Land Office.

Washington, October 5, 1914.

Mr. W. B. Edwards,
Redlands, California.

MY DEAR SIR:

I am in receipt of your registered letter, dated September 26, 1914, addressed to the Commissioner of this office and noted: "Deliver only to Commissioner," in which you state in part as follows:

That justice may be promoted and fraud prevented, you are earnestly requested to suspend further action towards granting patent to the N. E. 1/4 of Sec. 11, T. 7 S., R. 22 E., S. B. M., under the S. A. H. scrip location of Patrick H. Bodkin until the protestant in

said action may be accorded an opportunity to appeal from the action of the Los Angeles office and submit argument on appeal.

In the absence of the Commissioner, I am replying to said letter.

112 By letter F. S. D. of July 15, 1914, the application of Bodkin (22839) was allowed, and the local officers were directed to issue final certificate on payment of the legal fee and commissions. Similar action was taken on July 25, 1914, on the application of Bodkin as assignee of Howland (022870), and his application as assignee of Dunn (022871), was held for rejection on July 16, 1914, and said case is now pending before the Secretary of the Interior on appeal, transmitted August 26, 1914. The history of your connection with said land and of the contests between yourself and Patrick H. Bodkin, was fully set out in said letter of July 15, 1914, from which it appears that your rights have been fully considered by this office and by the Department and determined adversely. You do not state in your letter that you have filed a protest against said applications of Bodkin, and the local officers have not transmitted any such protest, but it appears from a letter addressed by you to the Register and Receiver at Los Angeles on July 24, 1914, that you did file such protest. Said letter reads as follows:

Blythe, Cal., July 24, 1914.

Register and Receiver,
United States Land Office.

GENTLEMEN:

Please take notice that my present address is as noted above, to which notice of action in regard to protest of Bodkin's scrip location of the N. E. 1/4 of Sec. 11, T. 7 S., R. 22 E., S. B. M., may be mailed. Please file this notice with the protest.

Truly,
(Signed)

WILLIAM B. EDWARDS.

No final certificates appear to have been issued as yet on the two applications which were allowed as above stated.

The Register and Receiver at Los Angeles, California, have been called upon by letter of even date to report the action taken pursuant to said letters and to inform this office whether or not a protest has been filed by you, and, if so, to transmit the same with report of their action thereon, without delay.

Very respectfully,

C. M. BRUCE,
Assistant Commissioner.

10-3 T. M."

22. There was then introduced in evidence and read into the record a flimsy, being a copy of a letter from the office of the Commissioner of the General Land-Office under date December 23rd, 1914, which letter was as follows:

In reply please refer to F. S. D.—Los Angeles 922,871—M. A
M./2 L.
1 x 1 x (B. W. M.) Inc.

114 Address only the Commissioner of the General Land Office.
Patrick H. Bodkin, assignee of E. G. Schoonover, admr.
estate of Gilford M. Dunn.

William B. Edwards, Protestant.

Application under Secs. 2306 and 2307, R. S., allowed. Secretary's decision promulgated.

Alleged protest dismissed, without right of appeal.

Department of the Interior,
General Land Office,
Washington, December 23, 1914.

Register and Receiver,
Los Angeles, California.

SIRS:

By letter F. S. D. of July 16, 1914, the above-entitled application, filed in your office March 6, 1914, to enter under Secs. 2306 and 2307, R. S., the W. $\frac{1}{2}$ N. E. $\frac{1}{4}$, Sec. 11, T. 7 S., R. 22 E., S. B. M., containing 80 acres, was considered, clear-listed as to deposits of coal or other minerals, in accordance with the letter of the Director of the Geological Survey, dated May 27, 1914, the evidence of posing and publication and no-protest report of the chief of field division was stated to have been furnished, and the application was held for rejection for the reason stated in said letter, *was held for rejection for the reason stated in said letter*, namely,

115 that the right vested in the minor orphan children, John G. and Murphy G. Dunn, as held by the departmental decision in the case of John H. Mason (41 L. D., 361), and that the assignment of the administrator, did not, therefore, constitute a proper basis for the right claimed by the applicant.

The right is based on military service of Gilford M. Dunn in Co. "G", 2nd Regiment, Missouri S. M. Cav., from November 14, 1863, to November 7, 1865, and on H. E. 738, made by Gilford M. Dunn, at Little Rock, Arkansas, March 30, 1867, for the W. $\frac{1}{2}$ N. E. $\frac{1}{4}$, Sec. 5, T. 18 N., R. 1 W., 5th P. M., containing 80 acres, which was canceled December 11, 1876, for failure to submit proof within the statutory period.

Appeal was duly filed from said decision and subsequently dismissed at the request of the applicant, for the reason that additional evidence had been submitted, which, it is claimed, will meet the objections raised by this office to the application. The case was accordingly remanded Oct. 31, 1914, for consideration of the additional evidence.

Gilford M. Dunn was entitled to an additional right for 80 acres, based upon said service and original entry. He died in Randolph County, Arkansas, in the month of March 1872.

In said letter of July 16, 1914, a statement was made as to the con-

tests in which the N. $\frac{1}{2}$ of said Sec. 11 had been involved.
116 As one William B. Edwards has transmitted to this office certain papers in the nature of a protest, and request for suspension of further action on the applications of Bodkin, involving all of the N. E. $\frac{1}{4}$ of said Sec. 11, it will be necessary to again state briefly the history of the various attempts to acquire title to the N. $\frac{1}{2}$ of said Sec. 11.

On May 18, 1903, Jacob L. Geiger made H. E. 10239, for the N. W. $\frac{1}{4}$ of said Sec. 11, T. 7 S., R. 22 E., S. B. M. Affidavit of contest was filed against said entry on Jan. 30, 1908, by Florence V. Bodkin. Said contest was decided in favor of contestant March 13, 1908, the entryman having relinquished his entry March 7, 1908, after notice of the contest had been served on him. The Register notified Florence V. Bodkin, July 1, 1908, that the land was withdrawn September 12, 1903, and so remains withdrawn; that contestant has a preference right of entry for thirty days after the land shall have been restored to entry and that during said time no one has a right to take possession *to* said land or to settle upon or reclaim it adverse to her. The withdrawal mentioned was made under the first form of the Reclamation Act, and the land was restored from said withdrawal January 10, 1910, opened to settlement

April 18, and to entry May 18, 1910. On the request of the 117 Surveyor General, it was suspended pending an examination as to the character of the land, and was relieved from such suspension May 22, 1912. Florence V. Bodkin executed her homestead application (010,578), pursuant to said notice of her preference right, on May 18, 1910, and she died March 25, 1912. Her entry was placed of record June 1, 1912.

On May 18, 1910, Charles E. Wells, of Blythe, Cal., filed his homestead application (010,591), for said N. W. $\frac{1}{4}$, which was rejected by your office May 24, 1912, on account of conflict with homestead application 010,578, of Florence V. Bodkin, for said land, filed May 18, 1910, under her preference right in the case of Bodkin v. Geiger. The decision of your office adverse to Wells was affirmed by letter "H" of this office November 15, 1912. Appeal was duly filed from said decision, and on May 27, 1913, same was reversed by the Secretary of the Interior, citing Garvey v. Tuisks (41 L. D., 510). The Secretary concluded:

Bodkin's entry is accordingly canceled, and the application of Wells will be allowed in the event he makes proper showing of present qualifications to make homestead entry for the tract.

On August 29, 1913, a motion for rehearing of the decision of May 27, 1913, was denied. On January 3, 1914, petition for the exercise of supervisory authority was considered, the rights 118 of the parents of Florence V. Bodkin to exercise said preference right as her heirs, were taken into consideration, also the fact that her father, Patrick H. Bodkin, was at the time claiming the N. E. $\frac{1}{4}$ of said section under a homestead entry made by him. The Secretary stated:

In reference to Patrick H. Bodkin, he may not perfect both homestead entries, as he could not comply with the law as to both, but he

may elect which he will perfect; and the fact that he has made homestead entry in his own right does not preclude his election to make and perfect homestead entry as co-heir with his wife, based upon the application of his daughter, notwithstanding his present entry or Wells's appearance in the case. Thirty days from notice of this decision is, therefore, hereby allowed the father of said Florence V. Bodkin, appearing herein as one of her heirs, to elect whether he will relinquish his present homestead entry and make with his wife as co-heir, homestead entry based upon said Florence V. Bodkin's application; at the expiration of which period adjudication will be had. The case is remanded for action in accordance with the foregoing.

Said decision was promulgated by letter "H" of January 26, 1914.

On March 18, 1914, you reported that, pursuant to notice of said decision, Patrick H. Bodkin, on March 6, 1914, filed H. E. 022872, for the N. W. $\frac{1}{4}$ of said Sec. 11, which was suspended for 119 evidence of naturalization. The record of his naturalization

was furnished on March 9, 1914. You placed the entry of record on said date and relieved it from suspension. On the same date, Bodkin relinquished his H. E. 010652, for the N. E. $\frac{1}{4}$ of said section. By letter "H" of May 2, 1914, the cancellation of Bodkin's H. E. 010652 was noted of record, H. E. 010591, of Wells, for the N. W. $\frac{1}{4}$, was canceled, and the contest case of Wells v. the heirs of Bodkin, was closed.

On September 22, 1914, said Charles E. Wells filed his affidavit of contest against H. E. 022872, which you rejected on the same date because the allegations of contest did not constitute facts sufficient to warrant a cause of action. Wells appealed from said decision, and you transmitted the papers with your letter of November 1, 1914, and said contest case is now pending in this office and will be considered in another communication.

On December 1, 1902, William B. Edwards made H. E. now designated as 02472, for the N. E. $\frac{1}{4}$ of said Section, and on January 30, 1908, Patrick H. Bodkin filed a contest against the said entry, pursuant to which the same was canceled April 19, 1910, and the contest case of Bodkin v. Edwards closed. On May 18, 1910, William B. Edwards filed application to make a second homestead entry for said N. E. $\frac{1}{4}$, serial 010583, alleging residence on the 120 tract since April 18, 1910. Said application was suspended pending the decision as to the character of the land. On May 18, 1910, Patrick H. Bodkin filed his H. E. 010652, for said N. E. $\frac{1}{4}$, in the exercise of the preference right acquired under his successful contest against Edwards. The application of Bodkin was also suspended pending the decision as to the character of the land. The land was restored from suspension May 22, 1912. On said date the entry of Bodkin was allowed, and the application of Edwards was rejected for conflict therewith. From said action Edwards appealed. The action of your office was affirmed by letter "H" of Nov. 21, 1912, subject to the right of appeal. Appeal was duly filed from said decision, and the same was affirmed by the Secretary of the Interior May 27, 1913. On August 21, 1913, motion for

rehearing of the decision of May 27, 1913, was denied, and October 2, 1913, petition for the exercise of supervisory authority was also denied.

On September 11, 1913, prior to the decision last above mentioned, Edwards filed an application in your office to contest the entry of Bodkin, charging that Patrick H. Bodkin filed on land covered by the open and notorious settlement, residence, occupation and cultivation of myself, W. B. Edwards; that my settlement right antedates any possible preference right claimed by Bodkin; that Bodkin never legally established his residence nor cultivated the land, and that his preference right was obtained and his entry made for speculative purposes, he having offered to sell to Mrs. Russell, of Hemet, California, and others. Said application was rejected by your office on the grounds (1) that the allegations were res judicata, and (2) that they were insufficient to warrant a hearing. It appears that Edwards appealed from said decision, but his appeal is not filed with the contest case of Edwards v. Bodkin (010583). It is presumably filed with the entry of Bodkin (010652), which appears to have been misplaced in the files. On October 31, 1913, this office, by letter "H," affirmed your action (1) for the reason that the rights of Edwards under his alleged settlement and occupancy had already been adjudicated, (2) that the charges that Bodkin had never legally established a residence or cultivated the land, are mere conclusions, as to the correctness of which it can not be left to the contestant to determine, and (3) that under the long and well-established rules of the Department, a charge that an entryman has offered to sell his interest in the tract, is not sufficient to sustain the charge that his entry was made for speculative purposes. You were directed to notify Edwards of said decision and of his right of appeal. Appeal was filed from said decision, and on March 20, 1914, the Secretary of the Interior affirmed the action — this office, stating:

This appeal has not been served upon Bodkin, as required by the Rules of Practice, and the same should not have been transmitted to the Department. It is properly subject to dismissal on motion made by Bodkin for that reason. No merit, however, appears in the contentions made therein as to the decision appealed from, and said decision is affirmed and the case is hereby closed under amended rule 83 of practice (41 L. D., 175).

Petition for the exercise of supervisory authority was denied by the Secretary April 20, 1914. After reciting the prior action of this office of October 31, and of the Department of March 20, the Secretary stated:

It is stated in this petition that Bodkin relinquished his entry March 9, 1914, which Edwards contends, operated to invest him with a right to reinstatement of his own prior entry for said lands, canceled and the case closed on Bodkin's contest, as above stated.

The record before the Department does not show Bodkin's relinquishment of his entry, the same doubtless not yet having been transmitted by the local officers. Admitting such to have been filed, however, no rights accrued to Edwards by virtue thereof, his contest

123 affidavit then pending on appeal being insufficient in substance. His rights under his original entry for said lands ended when cancellation of that entry — under Bodkin's contest. This petition is denied.

Attached to said petition is a request of Edwards for reinstatement of his original entry, also an affidavit which he designates "Affidavit protesting acceptance of S. A. H. location of Patrick H. Bodkin, for the N. E. $\frac{1}{4}$ of Sec. 11, T. 7 S., R. 22 E., S. B. M." All of said papers were considered by the Department in its decision denying the petition for exercise of supervisory authority, dated April 20, 1914. The contest case of Edwards v. Bodkin was closed by letter "H" of May 16, 1914, and the decision of the Department promulgated.

On March 6, 1914, the date of filing his relinquishment of H. E. 010652, for the N. E. $\frac{1}{4}$ of said section, Patrick H. Bodkin filed his three separate soldiers' additional applications for said land, 022869, as assignee of Anna Dieckmann, widow of Peter Dieckmann, for the N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, allowed by letter F. S./D. of July 16, 1914; 022870, as assignee of Benjamin F. Howland, for the S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, allowed by letter F. S./D. of July 25, 1914, and 022871, as assignee of E. D. Schoonover, Admr. Estate of Gilford M. Dunn, for W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ said Sec. 11 (the application herein), held for rejection as stated in the beginning of this letter. Final certificates issued on 022869 and 022870, on September 23, 1914, and 124 said two entries are now pending in this office, awaiting final action looking to their approval for patent.

On October 2, 1914, a registered letter was received from W. B. Edwards, dated September 26, 1914, at Redlands, Cal., requesting this office to suspend further action toward granting patent to the N. E. $\frac{1}{4}$, Sec. 11, T. 7 S., R. 22 E., S. M. B., S. A. scrip location of Patrick H. Bodkin, until the protestant in said action may be accorded an opportunity to appeal from the action of the Los Angeles office and submit argument on appeal.

As it appeared from the records that said Edwards had advised your office from Blythe, Cal., July 2, 1914, to notify him at the address given in regard to a protest of Bodkin's scrip location, this office, by letter of October 5, 1914, directed you to report what action had been taken on said serial 022869 and 022870, and also to transmit the protest if any had been filed in your office by said Edwards and to report the action taken thereon. By letter of the same date, Edwards was advised of the status of the three applications of Bodkin and of the fact that you had been directed to make report, as above stated. On October 15, 1914, you reported that final certificates had issued on 022869 and 022870, and that the only protest filed by Edwards in your office was transmitted to his office with the returns of the month of March, 1914.

125 On October 13, 1914, another communication was received from Edwards, which he designated "Motion to reinstate protest, accord a hearing to protestant and remand case to Register and Receiver for decision in regular order." On October 19, 1914, a reply was received from Edwards to the letter addressed to him

October 5, 1914. As the application herein, 022871, was then pending before the Department *for consideration by letters S. F./D. of October* on appeal, all of said papers were transmitted to the Department for consideration by letters F. S./D. of October 19, 1914, and October 24, 1914. On October 31, 1914, all of said papers were returned to this office from the Department with the information that the case herein had been remanded as stated in the beginning of this letter, and that no action by the Department appeared necessary on said papers.

It appears from the foregoing that the right of Edwards to the N. E. $\frac{1}{4}$ of said Sec. 11 has been twice adversely determined by the Department. His request for suspension of action and for remanding the alleged protest to your office is, therefore, denied, and it is held that Edwards has no right of appeal from this action. You will, however, notify Edwards that final action will be deferred for twenty days from service of notice hereof to enable him to apply to the Secretary of the Interior for an order certifying the record under rule-78 and 79 of the Rules of Practice.

126 You will also notify Bodkin that he will be allowed thirty days in which to pay the legal fee and commissions.

Should Edwards file an application for such order within twenty days, you will transmit the same and await further instructions. Should he fail to do so and Bodkin should tender the fee and commissions within thirty days from notice, you will place the entry of record in the name of Patrick H. Bodkin, assignee, involving the right of Gilford M. Dunn, and issue final certificate.

Three copies of the departmental decision remanding the case are herewith inclosed, also three copies of the latter returning said papers of Edwards.

Serve notice personally or by registered letter, and make report. Copy inclosed.

Very respectfully,

Commissioner.

12-12 T. M."

127 . 28. Counsel for plaintiff thereupon read into the record from the Transcript of the testimony taken at the hearing of the contest above referred to that portion of the testimony of Patrick H. Bodkin as offered, as follows:

"Q. Mr. Bodkin, you are acquainted with the land in question in this proceeding?

"A. Yes, sir.

"Q. When were you first on the land?

"A. Well, about January 20th, I think, along there, of the present year.

"Q. Have you been on the land since that time?

"A. Yes; I have been on there three different times since then."

"Q. Do you say positively the land had been abandoned?

"A. I say it appeared to be abandoned.

"Q. Didn't you say in your direct examination positively that it had been abandoned?"

"A. I answered that it had been abandoned for six months last past. That is what I said.

"Q. You are prepared to swear positively to that fact, that it had been abandoned for six months last past?

"A. I was so informed.

"Q. Do you say positively, without any qualifications?

"A. I hadn't lived there. I couldn't state anything about that. I took the statement of people who had lived there, to be truthful men.

"Q. You didn't make any qualification. Do you wish to qualify the statement now that it appeared to you that it had been abandoned, instead of stating absolutely the fact that it had been?"

"A. I don't think so."

128 31. After the introduction of that portion of the transcript of testimony of Patrick H. Bodkin, offered by plaintiff and taken at the hearing of the contest between the above entitled parties, and after the stipulation as to the whole evidence taken at such hearing, plaintiff took the stand in his own behalf.

He testified as follows:

My name is WILLIAM B. EDWARDS. I am the plaintiff in this case.

"Q. Calling your attention to a homestead application filed by you December 1, 1902, state if you went upon the land described in that application after making the application.

Mr. Stone: That is objected to as incompetent, irrelevant and immaterial, the issue having been determined by the Land Department, and being purely a question of fact as to whether he went upon the land; it being determined adversely to him by all the departments of the Government, and he had full opportunity on motion for rehearing to deny it, and the decision is final.

Mr. Willis: We only seek to offer proof of his settlement and residence, and complying with the land laws under the second form of withdrawal, up to the first form of withdrawal, a period of seven or eight months.

The Court: I will overrule the objection."

129 Witness continued to testify:

Yes, sir; I did. It was about the first of January. The entry was made about the 1st of December. I went on the land on the 1st of January, 1903. I commenced building a house, and put down a well, built a corral, cleared off part of the land, got a team and wagon and tools, etc. Did not complete the house at that time.

"Mr. Stone: Your Honor understands our objection goes to all this?"

The Court: Yes.

Mr. Stone: And we have an exception to the ruling?

The Court: Yes, sir. The objection will be overruled and the exception entered."

Being questioned by the court, witness continued to testify:

Well, I started to build an adobe house. I had the adobe bricks moulded and dried, and I had the lumber taken up with me from Yuma to complete it, and I got hurt. I got another person to lay the bricks up and finish it out, put the doors in and put a roof over it. Arrow weed roof. Had the house entirely enclosed. It was about 12 by 14. It was more than 12 by 14. At least 12 by 14. The door was an ordinary size door. It had no floor in it. It had an opening for a window. The top part was completed with lumber. The window was the usual size. I think about 2½ feet by 4½ feet.

130 By Mr. Willis:

"Q. Did you between January 1st and the date of the first form of withdrawal on September 8, 1903, remain on the land continually?"

A. I didn't just get that.

By the Court: Did you stay on the land there continually up to the withdrawal of the land?"

Well, I didn't stay on the land continually after I was hurt. I went to Imperial Valley in March. I got back in September. I stayed there on the land from January until March. Then I got kicked by a horse and broke my rib and went to Imperial Valley to be doctored for one thing, and also I got out of money for another thing, and I had to get money by some means. About the 1st of September I came back to the land. I stayed on there a few days, and I heard of this first form of withdrawal, and information was that it was withdrawn in order to construct a high dam at Yuma and back the water over it. That dam was to be 60 feet high. I read everything I could get on the subject, informed myself the best I could.

In response to questions by the Court witness testified:

That well I put down was a driven well. I think the pipe was 20 feet long. I got water. Did not have a windmill. Had a pump on it. A hand pump. At that time I cleared only 3 or 4 acres. I did not measure it, but I think so. The brush was cleared 131 off completely. The land was fit for cultivation otherwise than it would have to be watered.

Continuing examination by Mr. Willis, witness testified:

I did not at that time obtain water enough from this well for irrigation purposes. It was possible to get water in that way for irrigation purposes in that neighborhood by going to a large expense. It was not practical for another reason, that the water was largely mineral and would not produce very long. There was some natural growth on the land. Some mesquite trees and some sage brush. A crop of any character could not be raised on that ground without irrigation. The ground was suitable for cultivation of crops with the use of water. I expected then that the government would install the system. I first made effort to procure water for irrigation in 1908

from the Holabird Land & Water Company. Prior to 1908 there was no means of making application, no possibility. There was no company to get water of and no settlers could do it individually on account of the expense. The situation there was such that it required cooperation of homesteaders, or the help of the government, one or the other. An individual could not on limited means procure water from any source. In 1908 I first found I could get water from the Land Company. I went back there every six months to see what the chances were of doing anything, and at that time I found that the

132 settlers were able to buy water of the Land & Water Company by making their own ditch to the Land & Water Company's lines. That was about the first of April, 1908. I received a letter from the defendant at that time after I had gone upon the—I was going to the land. I got it at the Palo Verde Postoffice as I went past. I had my mail forwarded when I started up there. The letter in question I found at the Palo Verde Postoffice, forwarded to me there from some other address. That was the first information I had of the contest. I was preparing to cultivate and improve the land as soon as I could possible to do so. I arranged to get water then. There was no water available prior to that time. I got water from the Colorado River. I was working on the land when the notice of contest filed by Mr. Bodkin was served on me. I was clearing and leveling it, bordering it. I was living on the land then. The house I had built was destroyed. I was building another house at the time. We were living in the open. I think that is the most arid country in the United States. I know the limits of what is commonly called the Blythe Rancho. It is between the government land and the river. Section 11 is about 9 miles from the River. The ditch or canal from which I obtained the water, with reference to Section 11 was northeast. The old ditch was some distance. The ditch we connected with was a new ditch, the Company made that year. The construction of the new ditch, and the cleaning out of the old one by the Land Company enabled me to procure 133 water. There were other settlers, or homesteaders on adjacent quarters to mine, or adjacent sections.

After the 1st of April, 1908, when I returned to the land I think I continued to reside upon the land until some time in November, 1913. During the period from April 1st, 1908, to November, 1913, I remained on the land residing there continuously. I made improvements, cultivated 87.77 acres, procured a water right, raised crops. At the time I first went upon the land, and up until 1908, there was no canal then in existence from which water could be brought to the quarter section. There was an extension of the old canal built afterwards by the Land & Water Company. The Land & Water Company was occupying the Blythe Rancho.

After the withdrawal of these lands under the first form on September 8, 1903, I made an effort to procure water for irrigation in the year 1908. The withdrawal prevented any more settlers from getting in, and prevented cooperative effort to procure water. With reference to the purposes and aims of the government with reference to furnishing water, I went simply on my understanding of the

meaning of the reclamation law. The government did nothing under that first form withdrawal as far as I know. At the time they were surveying the lands I talked with the engineer. After the first form of withdrawal the government did nothing on the ground, or for the ground, that I know of. In 1908 the settlers undertook to get water. The withdrawal of the land under the first form 134 interfered with cultivating the ground and raising crops thereon to the extent that it interfered with getting water. Cannot produce a crop without water. Water was finally obtained for other quarter sections as well as mine. Gradually the entire neighborhood was irrigated.

In response to question by the Court, witness testified that he was born in Illinois in the year 1862.

On cross-examination by Mr. Stone witness testified as follows: It is not a fact that I was not on the land at any time within the six months before January 30, 1908.

I returned to the land each six months with the exception of the year I got the leave of absence. I didn't set down the dates. I was on the land last prior to January 30, 1908, either in September or October of 1907. I couldn't answer you. I believe that is the only time in the six months. I didn't stay a great while, just long enough to go back and see what the conditions were and go back where I was. I slept on the land—probably not more than two or three nights. Went back to Imperial Valley then.

I was present at the hearing before the local land office here, when I was contested by Mr. Bodkin. I was not represented by an attorney. I represented myself. I know Mr. Neighbors. He lived about a mile, a mile or a mile and a half from this land, the Northeast Quarter of Section 11. He lived there sometime—for several years prior to January 30th, 1908. He is the same Mr. 135 Neighbors that testified in the contest hearing. I heard his testimony. His evidence in the Transcript shows that he hadn't been back to the land within the six months *proceeding*. He went to the east. He said he went east on a visit. My filing on this land in 1902, before it was withdrawn was a homestead under the reclamation act, not a desert land entry. From 1903 to 1910 this land was continuously withdrawn from any kind of entry. That is as a homestead, or desert claim or otherwise. From 1903 to May 1910, it was withdrawn from all forms of disposition. I had made my entry. During that time Mr. Bodkin contested me. He was awarded a preference right I spoke of. I appealed that decision first to the commissioner of the general land-office. I suppose all of the evidence taken here at the local land-office relating to this entry and so on was certified up before the commissioner. He affirmed the decision of the land-office here on the facts. Then I appealed to the secretary of the Interior on the same decision, and the record was all transmitted to his office, and he also decided the case against me, affirming the other land-office departments. Yes, I made a motion for rehearing before the Secretary of the Interior and I argued the case on briefs. I appealed to the highest authority of the Land-office. Mr. Bodkin didn't serve me with anything until his

application for contest after he had relinquished his homestead entry as it states in the complaint.

136 The circular from the government concerning people who expected to remain on the land and acquire either by homestead entry, or desert land entry, to stick to the land and not leave it, and not go away, and not let the six months intervene, was a circular, as I understand it, to try to put the man who had entered the land on a different footing than the reclamation law put him. The circulars as I understand it, as I remember it,—wish to say now that I did not get the circulars until August, 1912, but I will waive that part of it as far as I am concerned,—the circular as I understand it was to the effect that the settler would have to proceed just the same whether the government got water to the land or not. Under the old homestead law the government did not require you to irrigate at least 40 acres of this 160 acres of land or put water on it. After the reclamation law it provided that the government should install a system. You were required to reclaim at least half of the land. This I did before I made my proof. There was water accessible from 12 to 15 feet of the surface if you had sufficient means to get water, but I say it wasn't practicable to reclaim the land in that way even if you had the means. I did not go ahead and prove up under my homestead entry because it was necessary for me to live off the land. I could not make a perfunctory proof if I were so inclined. The necessity of making a living kept me from proving up on my homestead. I did prove up. The government did let me

137 take it as a homestead *and the government did not accept my final proof.* I didn't get any patent or certificate of any kind *because they claimed Mr. Bodkin's contest was prior* and the government did not accept my final proof because they claimed Mr. Bodkin's contest was prior. I entered the land before it was withdrawn from all forms of entry. The withdrawal did not suspend my rights. I was informed at the Land office when I offered my final proof that the contest would have to be considered first. At the hearing between me and Mr. Bodkin on the contest the evidence was offered on the issue that I had complied with the law as far as I could under the conditions, and on the issue that I had not resided there for six months before the contest was held, it was offered as to that. I think I got a copy of the affidavit of Mr. Bodkin served on me before the contest hearing.

I worked around Holtville in 1907. I did not vote at Holtville or Imperial in 1907 and 1908 both. I voted once. I don't remember the date. I worked there from the time I left the plate until I came back in 1908. I worked around different parts of the Valley. I went down there in 1903 and I stated I drove back and forth every six months and worked in Imperial Valley until 1908. I couldn't tell to save my life what year I voted in Imperial Valley. I voted at Holtville.

138 GEORGE W. MCFEE, a witness on behalf of plaintiff, testified as follows:

I live at Palo Verde Valley. Have since 1896. Am familiar with Section 11, Township 7 South, Range 22 East. Was acquainted with that section in the fall of 1902. I first met the plaintiff, Mr. Edwards, about that time, or just before that time. I guess I am the man that put Mr. Edwards on that section.

"The Court: I don't see the importance of this thing.

Mr. Willis: Well, only testimony with reference to his first settlement, and then the interference by reason of the withdrawal.

The Court: Well, I know, but that is a matter that you have got to prove in the Land Office.

Mr. Stone: We object to that.

The Court: If you have not made that proof.

Mr. Willis: That proof has been made.

The Court: Well, why make it here?

Mr. Willis: Well then, let me confine myself to the proof of interference. That was not considered by the Land-office, and that is one of the things taken into consideration by the Circuit Court of Appeals. No consideration was given to the fact that the land at the time of the contest was under a first form of withdrawal, thereby being interfered with, and it is only on the question of interference that I seek to get this testimony.

The Court: Well, proceed.

139 Mr. Stone: We except."

I was there when Mr. Edwards went upon the land. I showed him the land myself.

"Mr. Stone: May it be understood that our objection runs to all that?

The Court: Yes, and exception entered."

Witness continues to testify:

With reference to the time when the land in that neighborhood was withdrawn under the first form of withdrawal on September 8, 1903, I was then in the Valley. The withdrawal stopped all the settlers from going in there and stopped our chances of getting water from the River to irrigate our land with. Was not able to procure any water for irrigation purposes on Section 11 from September, 1903 to the summer of 1908. During that time I observed nothing done by the government toward furnishing water upon any of those lands, more than just a survey. There was no water on or near Section 11 which could be utilized for irrigation purposes.

With the testimony of witness McFee, plaintiff rested his case.

"Mr. Stone: It may be understood that the court may consider any portion of the testimony taken at the trial that is in the record.

Mr. Willis: Yes, sir; that was understood.

The Court: Yes, you can call my attention to it. All the proceedings in the Land Office are in evidence.

140 Mr. Willis: Excepting the transcript of the testimony taken at the contest, and that it is stipulated may be used by the court upon consideration of this case, without its actual introduction into the evidence.

The Court: Well, it may be considered as part of the evidence, and then if you make up a record you can take out such parts as present your question.

Mr. Willis: Yes, sir.

The Court: We have a stipulation on that subject."

141 D-23378.
"H."

WILLIAM B. EDWARDS

vs.

PATRICK H. BODKIN.

Los Angeles 010,152, 010,583, Conflicting Preference Right, and Intervening Applicants. Motion Denied.

Motion for Rehearing in re Departmental Decision of May 27, 1913.

Department of the Interior,
Washington, Aug. 21, 1913.

The Department has given careful consideration to motion for rehearing, and to oral arguments presented thereon, filed in the above entitled cause wherein the Department rendered decision May 27, 1913, affirming that of the Commissioner of the General Land Office which affirmed the action of the local officers in rejecting the second homestead application filed by William B. Edwards May 18, 1910, based upon alleged settlement April 18, 1910, for certain described lands and allowing the homestead application filed the same date by Patrick H. Bodkin claiming a preference right as successful contestant against a prior entry for said lands, made by said Edwards, canceled April 19, 1910, on Bodkin's contest.

It appears that said prior entry was contested January 31, 1908, by Bodkin while said lands were embraced in a first form withdrawal under the reclamation act, in accordance with regulations then in force allowing contests notwithstanding such withdrawals, and hearing was duly had in September, 1908, resulting in a decision in Bodkin's favor, affirmed by the Commissioner June 142 25, 1909, and by the Department January 6, 1910 and April 12, 1910, and in cancellation of the entry April 19, 1910, as above stated. Said lands were restored January 10, 1910, to settlement on April 18, and to entry on May 18, 1910.

It appears further in argument that Edwards after his proven default as to residence in said contest case went upon said lands, was

residing there when his entry was canceled, and remained there thereafter; also, that Bodkin within six months after allowance of his entry attempted to establish residence thereof but was forcibly prevented by Edwards.

Edwards contends particularly that no preference right accrued to Bodkin because of the regulations of February 19, 1909 (37 L. D. 365), and that he as a settler on the land April 18, 1910, has superior right to make entry for said lands as a second entry under the act of February 8, 1908 (35 Stat. 6).

Said regulations of January 19, 1909, have by their terms no application to this case. They state that in "cases where contest has been allowed prior to such (a first form) withdrawal," such contest will be terminated ipso facto by such withdrawal, together with all rights under said contest. The contest in the present case was not allowed prior to withdrawal but pending the same and as above stated, in accordance with then existing regulations and had gone to hearing at least prior to said regulations of January 19, 1909. The latter's regulations were not intended to apply to such a case or to be retroactive, but to operate prospectively only, as expressly

stated in the case of *Fairchild vs. Eby* (37 L. D. 362), on 143 the decision in which said regulations were based, the Department stating therein "In the future" no contest would be allowed as to lands appropriated by the Government and such withdrawals would terminate contests pending at time of withdrawal.

Furthermore, even were this contest within the purview of said regulations, they could not by their own force operate to foreclose Bodkin's contest, and his contest was not in fact dismissed under said regulations. Upon restoration of the lands said regulations could have no possible application in the case and constituted no valid ground of objection to cancellation of the entry. The entry was, therefore, properly canceled under the contest and Bodkin earned a preference right accordingly against which Edwards' existing settlement on the land could not prevail. *Thorbjornson v. Hindman* (38 L. D. 335). A perfected contest right is a statutory one which the land department cannot deny or disregard by regulation or otherwise. *Reach v. Hanson* (40 L. D. 607); *Long v. Lee* (41 L. D. 326).

The Department has given to this case, and to the similar cases orally argued with it, most careful consideration, in view of the contentions made, and can see no warrant for disturbing the concurring actions taken by the lower tribunals and by the Department.

The motion is accordingly denied.

(Signed)

ANDREWS A. JONES,
First Assistant Secretary.

144 I, Frank Buren, Register of the U. S. Land Office, Los Angeles, Cal., hereby certify that I am such officer, and that the foregoing document is a copy of the original on file in this office.

[SEAL.]

FRANK BUREN,
*Register U. S. Land Office,
Los Angeles, California.*

145 D-23378.
"H."

WILLIAM B. EDWARDS

v.

PATRICK H. BODKIN.

Los Angeles 010,652, 010,583, Conflicting Preference Right and
Intervening Applicants. Petition Denied.*Petition for the Exercise of Supervisory Authority.*Department of Interior,
Washington, Oct. 2, 1913.

The department has given careful consideration to the petition for the exercise of its supervisory authority filed in the above entitled cause wherein decision was rendered August 21, 1913, on motion for rehearing in re departmental decision of May 27, 1913, denying said motion and holding that Bodkin has preference right to make entry for the lands involved in said cause which is prior and superior to the claim of Edwards. The petition is denied.

(Signature illegible.)
First Assistant Secretary.

Los Angeles, Cal., Oct. 28, 1913.

I, Frank Buren, do hereby certify that I am the Register of the U. S. Land Office at Los Angeles, California, that the annexed letter denying application for exercise of supervisory authority in re William B. Edwards vs. Patrick H. Bodkin, is a true copy of the original on file in the U. S. Land Office at Los Angeles, California.

[SEAL.]

FRANK BUREN,
Agent.

Endorsed: Filed Nov. 1, 1913. A. B. Pilch, clerk, by O. A. Lowentrost, deputy.

146 34. Thereupon the cause was submitted to the Court for consideration and thereafter, to wit, on the — day —, 1919, the court filed its conclusions in words and figures as follows: to wit:

"In the District Court of the United States, Southern District of California (Southern Division).

No. C-55, Equity.

WILLIAM B. EDWARDS, Plaintiff,

vs.

PATRICK H. BODKIN, Defendant.

Conclusions of the Court.

Henry M. Willis, Esq., of Los Angeles, California, for plaintiff.
Duke Stone, Esq., of Los Angeles, California, for defendant.

A complaint in this suit was passed upon by the court of appeals and reported in 249 Fed. 562. The complaint has been amended but not in any material respect as compared with the complaint passed upon by the said court. The facts, as stated in the opinion in that report, were proven at the trial. (The plaintiff offered no proof regarding the misconduct of any of the officers in the land office.) It follows, therefore, that the plaintiff is entitled to a 117 decree as prayed for in the complaint, unless the plea in bar pleaded by the defendant defeat that right.

The first plea sets up a judgment obtained in the Superior Court of Riverside County in an action wherein the defendant here, Patrick Henry Bodkin, was plaintiff, and the plaintiff here, William B. Edwards, was defendant. The facts concerning that suit are these: Suit was filed June 3, 1912. It was an action in ejectment to recover possession of the land in controversy in this suit. The defendant answered the complaint and a trial was had on October 18, 1912. Judgment was entered in *ans. entered in the cause* on November 12, 1913, wherein it was adjudged that the plaintiff (Bodkin) recover of the defendant therein the possession of the land described in the complaint and \$50.00 damages for rents and profits. On February 4, 1914, the defendant in the said cause filed a notice of appeal to the Supreme Court of California, and on the same day filed an undertaking on appeal. This notice of appeal and bond in pursuance thereof removed the case to the Supreme Court.

The court is of the opinion that the plea in bar, as above stated, does not defeat the right of plaintiff's recovery. The action in ejectment was merely to recover possession of the land based upon the legal title. And since the appeal has not been determined, the action is still pending.

The defendant also pleads in bar a judgment in a suit in the Superior Court of the State of California, in and for the 148 County of Riverside, entitled William B. Edwards V. Patrick H. Bodkin, being the same parties here in litigation. The facts, concerning that suit, in so far as material here, are as follows:

A demurrer was upon the following grounds: First, that the court had no jurisdiction of the subject-matter of said action; and second, that said first amended complaint did not state facts sufficient to constitute a cause of action. On June 8, 1916, the court made an order in words and figures following: "Demurrer to Amended Complaint Sustained. 10 days." On June 30, 1916, the court entered the following:

** * * An order having been entered in this action on the 8th day of June, 1916, sustaining the demurrer to the amended complaint herein and granting plaintiff ten (10) days within which to amend, and plaintiff having failed to further amend his complaint, it is hereby ordered and adjudged that the amended complaint herein be and the same hereby is dismissed, and that the defendant have and recover its costs of the said plaintiff taxed at Fifty & 40/100 dollars. Dated June 30th, 1916. Hugh H. Craig, Judge.

Other proceedings were had in said cause, with a view of having said judgment set aside. A motion to vacate the judgment was made. This motion to vacate the judgment has never been disposed of by the Superior Court of Riverside. The rule of res 149 adjudicata is stated by Sec. 1911, C. C. P., as follows:

That only is deemed to have been adjudged in a former judgment which *appears upon its face* to have been so adjudged, or which was *actually and necessarily* included therein or necessary thereto.

It will be seen that there are two grounds specified in the demurrer. One, that the court did not have jurisdiction and the other that the complaint did not state facts sufficient to constitute a cause of action. The judgment sustaining the demurrer does not specify upon what ground that the court sustained it. If the demurrer was sustained on the ground that the court had no jurisdiction, there would be no judgment upon the merits. Since it cannot be determined by an examination of the record upon what ground the court sustained the demurrer, it must follow that the judgment is not a bar. Besides, the proceedings show that the plaintiff was given leave to amend the complaint when the court made an order sustaining the demurrer. The plaintiff, however, never amended. It cannot be determined from the judgment entered in that case whether or not the court dismissed the complaint by reason of the failure of plaintiff to amend or by reason of the fact that the demurrer had been sustained to the amended complaint. It may well be that the

court on June 30, 1916, finding that the record showed that 150 the plaintiff had been given leave to amend and had not amended, thought the case ought to be dismissed for want of prosecution by the plaintiff. The judgment shows that the complaint was dismissed but why it was dismissed, whether by reason of the fact that the demurrer had previously been sustained or by reason of the fact that the plaintiff had not amended, is not set forth. There is no judgment that the prayer of the plaintiff's complaint be

denied, nor is there a formal decree of dismissal. It is plain that it does not appear upon the face of this judgment that the controversy was decided or actually and necessarily included therein or was necessary thereto.

For reasons above stated, I am of the opinion that the last mentioned suit is not a bar to the plaintiff's right of recovery in this suit.

Civil Code of Procedure Sec. 1911,

Civil Code of Procedure Sec. 581,

Goldtree v. Spreckles, 135 Cal. 666,

Kirsch v. Kirsch, 113 Cal. 56,

Bissell v. Spring Valley Township, 124 U. S. 225,

Smith v. McNeal, 109 U. S. 426,

Russell v. Place, 94 U. S. 606,

Wiggins Perry Co. v. O. & M. Railway, 142 U. S. 396.

The plaintiff will prepare a decree as provided by the rules of the court.

OSCAR A. TRIPPET,
Judge.

Dated April 9th, 1919."

151 35. Thereafter, to-wit, on the 18th day of April, 1919, and in pursuance of said conclusions, the Court entered its Decree in favor of the plaintiff and against the defendant, which decree was filed with the Clerk of said Court on the 18th day of April, 1919, and is in words and figures as follows, to-wit;

"In the District Court of the United States, Southern District of California (Southern Division).

No. C-55, Equity.

WILLIAM B. EDWARDS, Plaintiff,

vs.

PATRICK H. BODKIN, Defendant.

Decree.

This cause came on regularly to be heard on the 4th day of February, 1919, being a day in the January term, A. D. 1919, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, before the Court, upon the amended bill of complaint of the plaintiff, filed on the 24th day of June, 1918, and the answer of the defendant thereto, and proofs having been offered and submitted by the respective parties on the 4th and 5th days of February, 1919, and the cause 152 thereafter having been argued on the 25th and 26 days of February, 1919, and on said last named day submitted to the Court for consideration and decision: and thereafter, to-wit, on the 9th day of April, 1919, being a day in the January term A. D. 1919,

the Court having duly considered the matter and being fully advised in the premises, announces and files its conclusions thereon:

Now therefore, by reason of the premises and upon consideration of the said amended bill of complaint, the answer thereto of the defendant, and the said proofs, it appearing to the satisfaction of the Court that the plaintiff is entitled to a decree declaring plaintiff to be the real owner of the real property described in the amended bill of complaint, and in the series of patents issued to the defendant and particularly mentioned and described in said amended bill of complaint, and decreeing that the defendant is a trustee holding the said series of patents and the title thereby conveyed for the use and benefit of plaintiff, and decreeing and ordering the defendant to transfer the title thereto to the plaintiff by a proper instrument of conveyance, it is, by the Court, upon consideration thereof:

Ordered, adjudged and decreed as follows, to-wit:

First. That the plaintiff, William B. Edwards, is the real owner of that certain real property, situate, lying and being in the 153 County of Riverside, State of California, and as particularly described in the amended bill of complaint as follows, to-wit:

The North East Quarter (N. E. $\frac{1}{4}$) of Section Eleven (11), Township 7 South, Range 22 East, San Bernardino Base and Meridian:

and as particularly described by parcels thereof, in United States Patents issued to and in the name of defendant, as follows, to-wit:

Patent No. 484407, issued July 28, 1915, for the West one half (W. $\frac{1}{2}$) of the North East Quarter (N. E. $\frac{1}{4}$) of said section: Pat-

August 6

ent No. 485834, issued July 23, 1915, for the South East Quarter (S. E. $\frac{1}{4}$) of the North East Quarter (N. E. $\frac{1}{4}$) of said section: and Patent No. 485833, issued August 6, 1915, for the North East Quarter (N. E. $\frac{1}{4}$) of the North East Quarter (N. E. $\frac{1}{4}$) of said section:

Second. That the defendant, Patrick H. Bodkin is the trustee of the plaintiff William B. Edwards, and holds the said series of patents and the title thereby conveyed of the real property therein described and conveyed and hereinbefore particularly described, in trust for the use and benefit of the plaintiff.

And it is further ordered, adjudged and decreed that within 60 days after the entry of this decree, the defendant, Patrick H. Bodkin, shall make, execute and deliver to the plaintiff a good and sufficient deed of conveyance of the above described real property 154 in fee simple, conveying the title to said real property described in said patents, and hereinabove particularly described, to the plaintiff, and shall acknowledge the execution thereof so as to entitle the same to be recorded.

It is further ordered, adjudged and decreed that plaintiff have and recover of and from the defendant his costs herein incurred and taxed in the sum of \$130.96 \$— Dollars.

Dated April 18th, 1919.

OSCAR A. TRIPPET,

Judge.

Approved as to form as provided by Rule 45.

DUKE STONE,
Atty. for Defendant.

April 18, 1919."

155 37. Thereafter, to-wit: on the 24th day of July, 1919, said petition for rehearing came on before the Court, and the Court after hearing the same, caused to be entered an order denying the same which is in words and figures as follows, to-wit:

"The Court at this time hands down his written opinion in the above entitled cause and the same is at this time filed. Said opinion denying defendant's motion for a rehearing."

and filed therein his opinion, or conclusion, in words and figures as follows, to-wit:

"In the District Court of the United States, Southern District of California (Southern Division).

In Equity. No. C 55.

WILLIAM B. EDWARDS, Plaintiff,

vs.

PATRICK H. BODKIN, Defendant.

Conclusion of the Court.

Henry M. Willis, Esq., of Los Angeles, California, for the plaintiff.

156 Dan V. Noland, Esq., and Duke Stone, Esq., of Los Angeles, California, for defendant.

This is an application for rehearing. Upon the trial of the case great stress was laid upon the judgments introduced in the case and very little was said concerning the proofs relative to the allegations in the complaint. On the application for rehearing it was contended that the proof does not support the allegations in the complaint in several particulars. Great controversy arose during the argument, concerning the meaning and importance of the following quotation from the opinion rendered by the circuit court of appeals, to-wit:

"On May 5, 1908, the defendant served a notice of contest upon the plaintiff, in which it was charged that the plaintiff had never established a residence upon the land, had made no improvements thereon, and that he had abandoned the same for more than six months. The defendant, in support of this contest, made oath that he did not know and had no means of knowing the facts. This was insufficient to initiate a contest. Schofield v. Cole, 1 Land Dec. 140."

This is a correct statement of what the allegations of the complaint are, and the syllabus No. 5 in the opinion is as follows:

157 'A notice of contest against an entryman on public lands, in support of which the contestant made oath that he did not know and had no means of knowing the facts, is insufficient to initiate a contest.'

This syllabus correctly interprets the decision on this subject. The proof adduced at the trial of the case supports the allegations in the complaint in this regard. There is no ambiguity in this statement of the court. It certainly states that no contest was initiated. The attorney for the defendant argues that the court did not mean to decide that if the affidavit of contest filed by the defendant was verified positively by him that that would not initiate a contest, and he argues that it would initiate a contest, even though it subsequently developed that the contestant did not know anything about the facts and only testified on information and belief. He argues that if the affidavit of contest be made positively,—it does not matter whether contestant knows the truth of it or not,—it would initiate a contest. He points out that the authority cited by the court of appeals is a decision of the land office based upon an affidavit in support of a contest that was sworn to by the witness only upon information and belief, and the office held that such a supporting affidavit was not sufficient. In other words, the defendant argues that if the contestant swears positively to the facts, it makes no difference whether he knows them to be true or not, it is sufficient to initiate a contest. This argument leads to this absurdity: If a man who stands in awe of the

158 law and in fear of God makes an affidavit on information and belief to initiate a contest, it will be rejected. But if a reck-

less man, who cares naught for the law or divinity, swears positively to the affidavit of contest, it will suffice to initiate a contest, although he does not know anything except upon information given him by others. And that this would be true even though affiant knew the rules required him to swear positively. If such be the law, then the law sets a premium upon the reckless and condemns the man who has a conscience. It may well be that the court of appeals took this into consideration and had in mind that it might properly be regarded as false swearing for a man to swear positively he knew a thing, when he only knew it on information and belief, although it might not constitute perjury. If, however, a man is conscious, when giving his testimony, that he does not know anything about the matter to which he is testifying, he ought to be regarded as swearing falsely. (People v. Von Tiedeman, 120 Cal. 128, p. 136.) It is also probable that the court of appeals considered that since the department required a man to swear to a thing positively, that if he swore to it positively when he only knew it upon information derived from others, then he would be perpetrating a fraud, because he would have misled the department.

The attorney for the defendant also argues that it made no difference whether the affidavit of contest was sufficient because the con-

159 testee appeared and the land office decided the matter. Land office decisions were cited to the effect that the land office had a right to proceed to hear a contest, notwithstanding the affidavit of contest was insufficient and notwithstanding the contestant may have abandoned the matter. That upon the serving of the notice of contest the land office acquired jurisdiction and the department had a right to decide the case. In a court of justice it is necessary to file a declaration, complaint, or other document sufficient to give the court jurisdiction, and if a document is not filed which is sufficient to initiate the proceedings, all subsequent acts of the court are futile and nugatory and no rights whatever are adjudicated. The question arises did the court of appeals have in mind this principle of law when it made the statement above quoted? The statement in the opinion would have no useful purpose unless the court was of the opinion that there was no contest and the acts of the land department were without jurisdiction. Otherwise, the court should have ignored this allegation in the complaint or should have simply stated that it made no difference, that the land office had decided it anyhow. This would have been in line with the argument of the defendant. In this connection it must be borne in mind that the complaint stated that the land department decided the question against the plaintiff, although this fact is not referred to in the decision of the court of appeals.

160 The attorney for the defendant asserts that notwithstanding there was no contest, it could not make any difference. But it does make a difference. If there was no contest, the defendant never acquired any preference right of entry, and that fact has an important bearing throughout this case. It also has a bearing on the interpretation to be given to the decision of the land department.

The court of appeals points out (page 569) that even though there was a contest, the defendant Bodkin could not have obtained any preference right. This is set out very clearly in paragraph 9 of the syllabus, which is as follows:

'Any right under regulation 7 of June 6, 1905, issued by the Secretary of the Interior under Reclamation Act June 17, 1902, Sec. 10, which a successful contestant of a homestead entry on land withdrawn as susceptible of irrigation might have had, was lost by the promulgation of regulation 6 of January 19, 1909, declaring that, where a contest has been allowed prior to a first form withdrawal, the withdrawal, if made before the termination of the contest or entry of the successful contestant, will terminate all rights acquired by such contest, where the land, before termination of the contest or entry by contestant, was withdrawn under the first form for irrigation works, and the contestant had only a preference.'

We will, therefore, proceed to consider the case without regard to the rights of Bodkin, for under the decision of the court of appeals, he had no rights to be considered.

161 Counsel for the defendant states that section 5 of the Act of June 27, 1906, does not apply to homestead entries and that the decision of the court of appeals wherein the court decided that it was not necessary for the plaintiff to make improvements upon the land was erroneous. It is true that that section does not refer to homestead entries but section 3 of the Act of June 17, 1902, does refer to homestead entries made after withdrawal of the land, and expressly allows a homestead entry after withdrawal. It is provided by section 3:

'That all lands entered and entries made under the homestead laws within areas so withdrawn during which withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this Act; etc.'

Section 3 of the Act of June 17, 1902, and section 5 of the Act of June 27, 1906, construed together work out the proposition stated by the court. In any event the court of appeals has settled the law of this case, and this court must follow the decisions upon that subject.

The opinion of the land department shows that the plaintiff was residing upon the land and making improvements thereon at the time the alleged contest was heard in the land office. In this respect the court of appeals said:

'We assume that the act of June 27, 1906, was overlooked, 162 or its meaning misunderstood, when the officers of the Land

Department held that the plaintiff had abandoned his homestead entry while he was in fact residing upon the land and holding it, pending a final determination of the Secretary of the Interior as to whether or not the land would be required for irrigation works under the first form of withdrawal. This was clearly a mistake of law, and authorizes a review of the proceedings in a court of equity.'

The attorney of the defendant claims that the decision of the land department, notwithstanding there was no contest, is binding, for the land department had jurisdiction and could decide the matters it did decide. In the case of Lee v. Johnson, 116 U. S. 48, p. 52, it is said:

'If in any case it appears from the evidence that the claim of the complaining or moving party is against public policy or the law, so that in no event could he recover a final judgment or decision, whatever be the nature or extent of the testimony upon the point at issue, the tribunal should not hesitate to dismiss the suit or the proceeding.'

The point at issue in that case to which the Supreme Court was addressing its remarks was the decision of the land department to the effect that the party there was not acting in good faith, within the meaning of section 2262 of the Revised Statutes, in that, he was

163 seeking to acquire a homestead for someone else instead of himself. The statute provides that a homesteader must make oath, 'that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to

his own exclusive use; etc. There is no evidence at all in this case that the plaintiff was seeking this property for another person than himself. The court takes it that where a tribunal has jurisdiction to investigate a matter and reaches the conclusion that the party is seeking to practice a fraud upon the government, that such determination of the department is binding. It certainly is required, however, that the tribunal, making the investigation, must have some jurisdiction to do so. It would be against public policy to practice a fraud upon the government. In the case of Lee v. Johnson, above referred to, it said on page 52:

'While there are no formal pleadings in such cases, it is undoubtedly true, as a general rule, that in contested matters before the Land Department, as in those before the courts, the decision should be confined to the questions raised by the allegations of the respective parties; but this rule has its exceptions.'

And the exceptions to which the court refers are stated in the previous quotation. Of course, no court will enforce a contract or an alleged right of a party where the party is seeking to perpetrate a fraud upon the government. The land department, undeniably, has a right to cancel an entry, where upon a contest, even though prosecuted only on behalf of the government, it appears that the entryman has violated the law.

Then we must consider what did the land department decide? It must be borne in mind that the court of appeals in this case has decided, that the plaintiff did not have to make improvements upon the land. If the land office meant by stating that the plaintiff did not act in good faith, in that, he did not make improvements and reclaim the land as required by law, then the opinion of the court of appeals is to the effect that he did not have to comply with the homestead law in this regard during the time of withdrawal.

The Secretary of the Interior in his decision says that the plaintiff,

'From his own testimony, it clearly appears that he failed to comply with the law in the matter of residence. Indeed, his actual home was in another county, where he qualified as a voter by swearing that he resided there. He states that he visited the land about every six months, staying only a few days at a time. He had no house to live in. In fact, he had no house completed at date of hearing, more than six years after entry. "He evidently did considerable work on the land, in cultivating, digging brush, etc.: but this work was after he had personal knowledge that the contest had been filed.

He seems to think it a great wrong and injustice that another 165 may reap the benefit of his labors. The Department, under the plain facts in the case, especially the facts as shown from claimant's own frank testimony, is powerless to give relief.'

What the Secretary of the Interior stated would not constitute a fraud. The land was withdrawn under the reclamation act; the plaintiff did not have to cultivate or improve the same during the time of withdrawal. There is no finding of the exact time when he was away from the land. The statement of the Secretary of the

Interior shows that the plaintiff was acting in good faith, in that, he made his disclosures, believing, undoubtedly, that he — a right to do what he did do. The Secretary says, 'His testimony is quite frank, and bears the stamp of truth.'

The next question is did the plaintiff comply with the law? The allegations of the complaint as stated by the court of appeals are to the effect that the plaintiff complied with all the requirements of the homestead and reclamation laws, made final proof of such compliance before the United States Land Office for the land district, proved such compliance by two creditable witnesses, who made oath to all the items required by law to be made, paid all the fees required by law to be paid prior to receiving a patent for the land, published in due form notice to all persons having or claiming to have a better right

166 to such land than the plaintiff, and required such persons to appear and exhibit such claim of right. No person ap-

peared at the time and place and offered evidence of a better or of any right adverse to plaintiff; nor was notice ever given to plaintiff by the land office that the proof submitted was defective in any way as to the special or any of the conditions under which the entry was made. But the Land Department, without regard to the premises, refused to consider such proof and to issue a patent for the land described.

The final proof submitted to the land department sustains this allegation of the complaint, and, therefore, shows the finding of the Secretary of the Interior, that the plaintiff did not comply with the law, to be an incorrect decision on the undisputed facts.

The conclusions must be drawn; That there was no contest; that the defendant never acquired any rights in the property; that the plaintiff submitted final proof, showing his compliance with the homestead and reclamation laws, which the department did not consider. The decision of the Circuit Court of Appeals is to the effect that the land department should have considered it, and, if considered, necessarily, the patent would have gone to the plaintiff.

The motion for rehearing will be denied.

Dated July 24th, 1919.

TRIPPET,
Judge.

167 (NOTE.—On the oral argument for rehearing, the court thought that probably there was not sufficient attention paid to the proof concerning the matters arising in the land office, but after due consideration, the court is of the opinion that upon the trial of the case, the defendant did the proper thing in laying greater stress upon the judgments introduced in evidence.)"

To all of which acts in the Court exception was duly made by the defendant.

168 "In the District Court of the United States, Southern District of California (Southern Division).

No. C-55, Equity.

WILLIAM B. EDWARDS, Plaintiff,

vs.

PATRICK H. BODKIN, Defendant.

Order Allowing Appeal.

On motion of Duke Stone and Dan V. Noland, Esqs., solicitors and counsel for complainant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits stipulations and all stipulations and proceedings be forthwith transmitted to said United States Circuit Court of Appeals. It is further ordered that the bond on appeal be fixed at the sum of \$4,000.00, the same to act as a supersedeas bond for the period of one year from date and also as a bond for costs and damages on appeal.

Dated this 8th day of Sept. 1919.

TRIPPETT,
Judge.

169 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Duke Stone and Dan V. Noland for Appellant, Patrick H. Loughran of Counsel;

Henry M. Willis for Appellee.

Before Gilbert and Hunt, Circuit Judges, and Wolverton, District Judge.

(Opinion U. S. Circuit Court of Appeals.)

WOLVERTON, *District Judge:*

This is the second appeal. The first was by Edwards, complaining that the District Court erred in sustaining a motion to dismiss his bill of complaint. 249 Fed. 562. The bill is voluminous, setting

forth with much detail what was done in the Land Department affecting plaintiff's alleged rights, so that this court had before it practically the whole case. Although the facts were not proved, they were taken to be truly alleged for the purposes of the motion. Three principal questions were determined, which, if the conclusions reached by the court are to be adhered to, are decisive of the present controversy. They are:

(1) That the land department erred in matter of law in holding that the plaintiff had abandoned his homestead entry, while in fact he was residing upon the land and holding it pending a final determination by the Secretary of the Interior as to whether or not the land would be required for irrigation works under the first form of withdrawal. It is unnecessary to restate the reasoning of the court which induced the result.

(2) That the defendant acquired no preferential right by the proceedings had by reason of the lack of authority in the Commissioner of the General Land Office to promulgate the rule under which the right is claimed. But, says the court, "if it should be conceded that defendant did obtain a preferential right to enter the land while the land was completely withdrawn from entry under the first form, it was a right which, based upon a regulation, might be terminated by the Secretary of the Interior before entry, and in our opinion was so terminated by the regulations of January 19, 1909."

(3) Assuming that the defendant was permitted to substitute his scrip location under a claim of a preferred right, and that such scrip was issued under the law and regulation relating to soldier's additional homestead right, it was held that plaintiff was entitled to his homestead, under the regulations of the Land Department, for equitable reasons. Those reasons are fully stated in the opinion of the court.

A careful review of the testimony assures us that all material allegations of the bill of complaint have been substantiated, including the supposition of this court relative to use made of the soldier's additional homestead scrip by Bodkin in securing his entry of the land in the Land Department.

171 It is a rule of law no longer to be controverted in the Federal courts, that whatever has been decided upon one appeal cannot be re-examined in a subsequent appeal of the same suit or action. Thus far the determinations upon the first appeal become the law of the case, and *res judicata*, and thenceforth cannot again be questioned in the same cause by the parties to the suit or their privies. *Supervisors vs. Kennicott*, 94 U. S. 498; *Clark v. Keith*, 106 U. S. 464; *Mathews v. Columbia Nat. Bank of Tacoma*, 100 Fed. 393; *Guarantee Co. of North America v. Phenix Ins. Co.*, 124 Fed. 170, 174; *Mutual Reserve Fund Life Ass'n v. Ferrenbach*, 144 Fed. 342.

Applying the rule here, and seeing that the subsequent proceeding presents no additional question material to the issues, the former decision of this court is decisive of the case upon this appeal.

There is much testimony in the record that is concededly irrelevant and immaterial, much that is incompetent as well, but its admission by the trial court over objections and exceptions affords no ground in a cause in equity for reversal. The Court of Appeals gives consideration only to such as is competent and material to the issues joined.

Finding no error, the decree of the trial court will be affirmed.

[Endorsed:] Opinion. Filed May 18, 1920. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

172 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Decree.

Appeal from the Southern Division of the District Court of the United States for the Southern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Southern District of California, Southern Division, and was duly submitted:

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed:] No. 3428. United States Circuit Court of Appeals for the Ninth Circuit. Patrick H. Bodkin vs. William B. Edwards. Decree. Filed and Entered May 18, 1920, F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

173 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Petition for Appeal to Supreme Court of the United States.

And now comes the above appellant, to wit, Patrick H. Bodkin, by his counsel, and feeling himself aggrieved by the final decree of this Court entered on the 18th day of May, 1920, affirming the decree below filed in the case on the 18th day of April, 1919, hereby prays that an appeal may be allowed him from the said decree of the Circuit Court of Appeals of the Ninth Circuit to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith.

Petitioner further prays that a Citation issue as provided by law, and that a transcript of the record of such of the proceedings and documents upon which said decree was based, as set out in the preface herewith, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, District of Columbia, under the rules of said Court in such cases made and provided.

And petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the cause and that the amount of security may be fixed by the order allowing this appeal.

(Sgd.)

DAN V. NOLAND.

(Sgd.)

PATRICK H. LOUGHREAN.

174 Appeal allowed upon giving bond as required by law in the sum of \$12,000.00 I certify that the matter in controversy herein as shown by the records, exceeds in value Three Thousand Dollars, exclusive of interest and costs.

(Sgd.)

ERSKINE M. ROSS,

Judge of the U. S. Circuit Court of Appeals for the Ninth Circuit.

E. M. R.

Dated this 10th day of July, 1920.

Receipt of Copy of the within Petition and Order for Appeal is acknowledged this 12th day of July, 1920.

(Sgd.)

HENRY M. WILLIS.

[Endorsed:] Petition for and Order Allowing Appeal to Supreme Court of the United States and fixing amount of bond. Filed July 14, 1920. F. D. Monkton, Clerk. By Paul P. O'Brien, Deputy Clerk.

175 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Assignment of Errors on Appeal to Supreme Court of the United States.

Comes now the above named appellant, Patrick H. Bodkin, by his counsel, and in connection with his petition for appeal says that, in the record, proceedings and in the final decree of this Court, manifest error has intervened to the prejudice of the appellant, to wit:

1. The Court erred in holding that the Land Department erred in matter of law in finding and deciding that the appellee had abandoned his homestead entry.
2. The Court erred in holding that appellant had not acquired a preference right of entry under the act of May 14, 1880 (21 Stat. 140) by virtue of the final judgment rendered by the Land Department in and on appellant's contest against appellee's homestead entry.
3. The Court erred in holding that the regulations of the Department of the Interior of January 19, 1909 (37 Land Decisions, 365), terminated any and all right- appellant had acquired by and under his contest against appellee's homestead entry.
4. The Court erred in holding that the appellee was entitled to his homestead entry and the lands covered thereby, for equitable reasons, despite and notwithstanding the contest initiated against said entry by the appellant and the findings of fact and conclusions of law set out in the decisions and judgments of the Land Department under such contest.
5. The Court erred in assuming, contrary to the explicit showing the record before it presented, that appellant exercised the preference right of entry awarded to him through the decisions of the Land Department by locating assignable soldiers' additional homestead rights upon the lands involved in the litigation, the record showing that appellant exercised such preference right by making a homestead entry of the land on June 1, 1912.
6. The Court erred in failing to perceive among the admitted facts in the litigation the fact that, in enjoyment of his preference right of entry, the appellant filed his homestead application on May 18, 1910; that such application was finally accepted and entry there-

under allowed on June 1, 1912 and that it was not until March 6, 1914, that the appellant located the assignable soldiers' additional homestead rights on the land, doing so contemporaneously with the relinquishment of his homestead entry.

7. The Court erred in affirming the decree of the Court below granting the prayers of appellee's bill.

8. The decree is contrary to law.

Wherefore appellant prays that the decree of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed.

(Sgd.)
(Sgd.)

DAN V. NOLAND,
PATRICK H. LOUGHREN,
Attorneys for Appellant.

Received copy of the within assignment of errors this 12th day of July, 1920.

(Sgd.)

HENRY M. WILLIS,
Attorney for Plaintiff and Appellee.

[Endorsed:] Assignment of Errors on Appeal to Supreme Court of the United States. Filed July 14, 1920. F. D. Monkton, Clerk. By Paul P. O'Brien, Deputy Clerk.

177 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

WILLIAM B. EDWARDS, Plaintiff,

vs.

PATRICK H. BODKIN, Defendant.

Bond on Appeal.

Know all men by these presents, that we Patrick H. Bodkin, as principal, and Hattie Johnson, by occupation rancher, residing at Los Angeles in the Southern District of California, and Carrie Johnson, by occupation housewife, residing at Los Angeles in the Southern District of California and Charles E. Olive, by occupation rancher, residing at Blythe in the Southern District of California, and Bella E. Bodkin, by occupation housewife, residing at Blythe in the Southern District of California, and — by occupation — residing at — in the Southern District of California, as sureties, are held and firmly bound unto William B. Edwards in the sum of Twelve Thousand (\$12,000.00) dollars, lawful money of the United States, to be paid to him and his executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, severally, and each of our heirs, executors and administrators, by these presents in the amounts set opposite

our respective names hereunto signed. We, and each of us does, hereby consent that in case of default or contumacy on the part of the principal or sureties, execution to the amount hereinafter set opposite our respective names may issue against the goods, chattels, and land belonging to us respectively.

178 Sealed with our seals and dated this 23d day of July, 1920.

Whereas the above named Patrick H. Bodkin, has petitioned for an appeal to the Supreme Court of the United States from a decision of the United States Circuit Court of Appeals for the Ninth Circuit entered the 18th day of May, 1920, in the above-entitled cause affirming a decision of the District Court of the United States, Southern District of California, Southern Division, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named, Patrick H. Bodkin, shall prosecute his appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

	Name.	Amount.
(Sgd.)	HATTIE JOHNSON,	Twelve Thousand.
(Sgd.)	CARRIE JOHNSON,	Four Thousand.
(Sgd.)	CHAS. E. OLIVER,	Seven Thousand.
(Sgd.)	BELLA E. BODKIN,	One Thousand.
(Sgd.)	PATRICK H. BODKIN, <i>Principal.</i>	

179 STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 23 day of July, 1920, personally appeared before me Hattie Johnson, Carrie Johnson, Chas. E. Oliver, and Bella E. Bodkin known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and acknowledged that they executed the same as their free act and deed for the purposes therein set forth.

And the said Hattie Johnson, Carrie Johnson, Chas. E. Oliver and Bella E. Bodkin being by me duly sworn, each for himself says that he is a resident and householder in said Southern District of California, and that he is worth double the amount named in the foregoing instrument, over and above all his debts and liabilities in property exempt from execution.

(Sgd.)	HATTIE JOHNSON.
(Sgd.)	CARRIE JOHNSON.
(Sgd.)	CHAS. E. OLIVER.
(Sgd.)	BELLA E. BODKIN.

Subscribed and sworn to before me this 23 day of July, A. D. 1920.

[SEAL.] (Sgd.) ANDREW REUTER,
*Notary Public in and for the County of
 Los Angeles, State of California.*

The within bond is approved both as to sufficiency and form this 23 day of July, 1920.

(Sgd.) ROSS,
Circuit Judge.

[Endorsed:] No. 3428. United States Circuit Court of Appeals for the Ninth Circuit. William B. Edwards, Plaintiff, vs. Patrick H. Bodkin, Defendant. Bond on Appeal. Filed July 24, 1920. F. D. Monckton, Clerk.

180 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Designation of Record on Appeal to Supreme Court of the United States.

To the clerk of said court:

The appellant hereby requests the following be printed as a sufficient and complete record on which to submit the cause on the hearing thereof in the Supreme Court of the United States, and elects to have the record in said cause printed by and under the supervision of the Clerk of the said Supreme Court under the rules thereof. The parts of the record deemed necessary to print are the following:

I. Amended bill of Complaint.

II. Answer of the defendant.

Those portions of the printed transcript of record as filed in this Court on appeal from the District Court which are specifically described as follows:

III. The agreed facts as they are set out at pages 62 to 128 of such transcript, down to paragraph 23 at said page 128.

IV. Decision of First Assistant Secretary of the Interior Jones of August 21, 1913 and certificate thereto of Frank Buren, Register, as set out at pp. 245 to 248 of such transcript.

V. Decision of the Department of the Interior of October 2, 1913 and certificate thereto of Frank Buren, Register, as set out at pp. 252 and 253 of such transcript.

181 VI. Conclusions of United States District Court Judge Oscar A. Trippet as set out at pp. 272 to 276 of such transcript, and the decree in pursuance thereof at pp. 277, 278, 278 down to paragraph 36 at p. 280.

VII. Decree of said District Court signed by said District Judge as set out at pp. 277 to 279, and down to paragraph 36 at p. 280 of such transcript.

VIII. The conclusions of United States District Court Judge Trippet on the petition for rehearing, as set out at pp. 299 to 310 and down to paragraph 38 at p. 311 of such transcript.

IX. Order of Judge Trippet allowing appeal as set out at p. 317 of such transcript.

X. Opinion of this Circuit Court of Appeals.

XI. Decree of this Circuit Court of Appeals.

XII. Motion for appeal and order allowing same.

XIII. Assignment of Errors.

XIV. Bond on Appeal as same may hereafter be approved by the Court or a Justice.

XV. Citation to appellee to appear in Supreme Court.

XVI. This Designation of Parts of Record in this Court for Printing of Record in Supreme Court of the United States.

XVII. Clerk's Certificate as to transcript.

Dated this 10th day of July, 1920.

(Sgd.)

(Sgd.)

DAN V. NOLAND.

PATRICK H. LOUGHREAN.

Receipt of copy of the within praecipe is hereby acknowledged this 12th day of July, 1920.

(Sgd.)

HENRY M. WILLIS.

[Endorsed:] Designation of Record on Appeal to Supreme Court of the United States. Filed July 14, 1920. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

182 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

VS.

WILLIAM B. EDWARDS, Appellee.

Præcipe for Additional Record.

Designation of Additional Record on Appeal to the Supreme Court of the United States.

To the clerk of said court:

The appellee hereby requests that the following portions of the printed transcript of record, as filed in this court on appeal from the District Court, be printed in the record on appeal to the Supreme Court of the United States, in addition to those portions designated by Appellant in his designation dated July 10, 1920, to wit:

In addition to the portion of the record designated in Paragraph III of Appellant's designation, print that portion of said printed record, as filed, and therein referred to, as follows:

1. Beginning with Paragraph 28, on page 132, and ending at page 133, down to Paragraph 29.

2. Beginning with Paragraph 31 on Page 209, and ending at page 221, down to Paragraph 32.

Dated July 14, 1920.

(Sgd.)

HENRY M. WILLIS,
Attorney for Appellee.

Received Copy of the Within this 14 day of July, 1920.

(Sgd.)

DAN V. NOLAND,
By D. S.,
Attorney for Appellant.

[Endorsed:] Præcipe of Appellee for Additional Record. Filed July 15, 1920. F. D. Monkton, Clerk, By Paul P. O'Brien, Deputy Clerk.

183 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3428.

PATRICK H. BODKIN, Appellant,

vs.

WILLIAM B. EDWARDS, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and eighty-two (182) pages, numbered from and including 1 to and including 182, to be a true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the Assignment of Errors on Appeal to the Supreme Court of the United States, including the Opinion filed in the said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled cause as made and certified pursuant to designations of counsel for the respective parties filed, respectively, July 14, 1920, and July 15, 1920.

I further certify that the cost of the Transcript of Record amounts to the sum of One Hundred and Ten Dollars (\$110.00) and has been paid by the appellant.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 6th day of August, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

184 UNITED STATES OF AMERICA, ss:

To William B. Edwards, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein Patrick H. Bodkin is the appellant and you are the appellee, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be

corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable Erskine M. Ross Justice United States Circuit Court of Appeals for the Ninth Circuit, this 10th day of July, in the year of our Lord One Thousand Nine Hundred and Twenty.

ERSKINE M. ROSS,
Judge of the U. S. Circuit Court of Appeals for the 9th Circuit.

185 [Endorsed:] No. 3428. Patrick H. Bodkin, Appellant, vs. Wm. B. Edwards, Appellee. Citation to appear at Supreme Court of United States. Receipt of copy of the within citation is hereby acknowledged this 12th day of July, 1920. Henry M. Willis, Attorney for Plaintiff, Appellee. Filed July 14, 1920. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk. Patrick H. Loughran, Attorney-at-Law, Mills Building, Washington, D. C.

Endorsed on cover: File No. 27,852, U. S. Circuit Court Appeals, 9th Circuit, Term No. 495. Patrick H. Bodkin, appellant, vs. William B. Edwards. Filed August 18th, 1920. File No. 27,852.

(2723)